

Representative Joel K. Briscoe proposes the following substitute bill:

UTAH CLEAN ENERGY FUND

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Joel K. Briscoe

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the creation of a clean energy fund.

Highlighted Provisions:

This bill:

- ▶ lists the fund as an independent entity;
- ▶ enacts the Utah Clean Energy Fund Act, including:
 - stating purposes of the fund;
 - defining terms;
 - creating the fund and the fund's board of directors;
 - providing for an executive director;
 - establishing the duties of the board of directors; and
 - addressing capitalization of the fund; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2022:

- ▶ to the Office of Energy Development, Pass through as a one-time appropriation:
 - From General Fund, \$1,000,000.

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **63E-1-102**, as last amended by Laws of Utah 2018, Chapter 393

30 ENACTS:

31 **63H-9-101**, Utah Code Annotated 1953

32 **63H-9-102**, Utah Code Annotated 1953

33 **63H-9-201**, Utah Code Annotated 1953

34 **63H-9-202**, Utah Code Annotated 1953

35 **63H-9-203**, Utah Code Annotated 1953

36 **63H-9-204**, Utah Code Annotated 1953

37 **63H-9-205**, Utah Code Annotated 1953



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

40 Section 1. Section **63E-1-102** is amended to read:

41 **63E-1-102. Definitions -- List of independent entities.**

42 As used in this title:

43 (1) "Authorizing statute" means the statute creating an entity as an independent entity.

44 (2) "Committee" means the Retirement and Independent Entities Committee created by

45 Section **63E-1-201**.

46 (3) "Independent corporation" means a corporation incorporated in accordance with
47 Chapter 2, Independent Corporations Act.

48 (4) (a) "Independent entity" means an entity having a public purpose relating to the
49 state or its citizens that is individually created by the state or is given by the state the right to
50 exist and conduct its affairs as an:

51 (i) independent state agency; or

52 (ii) independent corporation.

53 (b) "Independent entity" includes the:

54 (i) Utah Beef Council, created by Section **4-21-103**;

55 (ii) Utah Dairy Commission created by Section **4-22-103**;

56 (iii) Heber Valley Historic Railroad Authority created by Section **63H-4-102**;

- 57 (iv) Utah State Railroad Museum Authority created by Section 63H-5-102;
- 58 (v) Utah Housing Corporation created by Section 63H-8-201;
- 59 (vi) Utah State Fair Corporation created by Section 63H-6-103;
- 60 (vii) Utah State Retirement Office created by Section 49-11-201;
- 61 (viii) School and Institutional Trust Lands Administration created by Section
- 62 53C-1-201;
- 63 (ix) School and Institutional Trust Fund Office created by Section 53D-1-201;
- 64 (x) Utah Communications Authority created by Section 63H-7a-201;
- 65 (xi) Utah Energy Infrastructure Authority created by Section 63H-2-201;
- 66 (xii) Utah Capital Investment Corporation created by Section 63N-6-301; [and]
- 67 (xiii) Military Installation Development Authority created by Section 63H-1-201[-];
- 68 and
- 69 (xiv) Utah Clean Energy Fund, created by Section 63H-9-201.
- 70 (c) Notwithstanding this Subsection (4), "independent entity" does not include:
- 71 (i) the Public Service Commission of Utah created by Section 54-1-1;
- 72 (ii) an institution within the state system of higher education;
- 73 (iii) a city, county, or town;
- 74 (iv) a local school district;
- 75 (v) a local district under Title 17B, Limited Purpose Local Government Entities - Local
- 76 Districts; or
- 77 (vi) a special service district under Title 17D, Chapter 1, Special Service District Act.
- 78 (5) "Independent state agency" means an entity that is created by the state, but is
- 79 independent of the governor's direct supervisory control.
- 80 (6) "Money held in trust" means money maintained for the benefit of:
- 81 (a) one or more private individuals, including public employees;
- 82 (b) one or more public or private entities; or
- 83 (c) the owners of a quasi-public corporation.
- 84 (7) "Public corporation" means an artificial person, public in ownership, individually
- 85 created by the state as a body politic and corporate for the administration of a public purpose
- 86 relating to the state or its citizens.
- 87 (8) "Quasi-public corporation" means an artificial person, private in ownership,

88 individually created as a corporation by the state, which has accepted from the state the grant of
89 a franchise or contract involving the performance of a public purpose relating to the state or its
90 citizens.

91 Section 2. Section **63H-9-101** is enacted to read:

92 **CHAPTER 9. UTAH CLEAN ENERGY FUND ACT**

93 **Part 1. General Provisions**

94 **63H-9-101. Title -- Legislative findings.**

95 (1) This chapter is known as the "Utah Clean Energy Fund Act."

96 (2) The Legislature finds that it is in the interest of this state to establish and support in
97 this state an independent nonprofit corporation for public benefit for the purposes of:

98 (a) promoting investments in qualified projects;

99 (b) financing and supporting qualified projects in rural Utah; and

100 (c) increasing significantly the pace and amount of investments in qualified projects at
101 the state and local levels by catalyzing and mobilizing private capital through public and
102 philanthropic investment and financial products and services designed for each qualified
103 project.

104 Section 3. Section **63H-9-102** is enacted to read:

105 **63H-9-102. Definitions.**

106 As used in this chapter:

107 (1) (a) "Alternative fuel vehicle project" means a project, technology, product, service,
108 function, or measure, or an aggregation of a project, technology, product, service, function, or
109 measure, that supports the development and deployment of alternative fuels used for electricity
110 generation, alternative fuel vehicles, and related infrastructure, including infrastructure for
111 electric vehicle charging stations.

112 (b) "Alternative fuel vehicle project" does not include a technology that involves the
113 combustion of fossil fuels, including petroleum or petroleum products.

114 (2) "Board" means the board of directors for the fund established under Section
115 63H-9-202.

116 (3) "Clean agriculture project" means an agriculture project that reduces net
117 greenhouse gas emissions or improves resiliency, including reforestation, afforestation, forestry
118 management, and regenerative agriculture.

119 (4) "Demand response project" means a project, technology, product, service, function,
120 or measure, or an aggregation of a project, technology, product, service, function, or measure,
121 that changes the usage of electricity by retail customers in this state from the normal
122 consumption patterns in response to:

123 (a) changes in the price of electricity over time; or

124 (b) incentive payments designed to induce lower electricity use at times of high market
125 prices or when system reliability is jeopardized.

126 (5) "Electrification" means the installation, construction, or use of induced electric
127 technology that replaces existing fossil-fuel-based technology.

128 (6) (a) "Energy efficiency project" means a project, technology, product, service,
129 function, or measure, or an aggregation of a project, technology, product, service, function, or
130 measure, that:

131 (i) results in the reduction of energy use required to achieve the same level of service
132 or output obtained before the application of the project, technology, product, service, function,
133 or measure, or aggregation; or

134 (ii) substantially reduces greenhouse gas emissions relative to emissions that would
135 have been produced before the application of such project, technology, product, service,
136 function, or measure, or aggregation.

137 (b) "Energy efficiency project" does not include a project relating to power generation
138 facilities that involve the combustion of fossil fuels, including petroleum or petroleum
139 products.

140 (7) "Fund" means the Utah Clean Energy Fund created in Section [63H-9-201](#).

141 (8) "Impacted communities" means:

142 (a) communities of color, which include any geographically distinct area the population
143 of color of which is higher than the average population of color in the state;

144 (b) communities that are already or are likely to be the first communities to feel the
145 direct negative effects of natural disasters and extreme weather changes;

146 (c) distressed neighborhoods, demonstrated by indicators of need, including poverty,
147 childhood obesity rates, academic failure, and rates of juvenile delinquency, adjudication, or
148 incarceration;

149 (d) low-income communities, defined as any census block group in which 30% or more

150 of the population are individuals with low income;

151 (e) low-income households, defined as households with annual income equal to, or less
152 than, the greater of:

153 (i) an amount equal to 80% of the median income of the area in which the household is
154 located, as reported by the Department of Housing and Urban Development; and

155 (ii) 200% percent of the federal poverty line; and

156 (f) rural areas, which include any area other than:

157 (i) a city that has a population of greater than 50,000 inhabitants; and

158 (ii) an urbanized area contiguous and adjacent to a city described in Subsection

159 (8)(f)(i).

160 (9) "Qualified clean energy project" means an alternative fuel vehicle project, demand
161 response project, electrification, energy efficiency project, renewable energy project, or system
162 efficiency project.

163 (10) "Qualified project" means a qualified clean energy project, clean agriculture
164 project, resilient infrastructure, and any other project identified by the board as consistent with
165 the purposes of the fund.

166 (11) "Renewable energy" means energy produced by:

167 (a) solar resources;

168 (b) wind resources;

169 (c) geothermal resources;

170 (d) nonhazardous, organic biomass;

171 (e) anaerobic digestion of organic waste streams;

172 (f) hydropower;

173 (g) fuel cells using renewable resources; and

174 (h) another source that naturally replenishes over a human, rather than geological, time
175 frame and that is ultimately derived from solar, water, or wind resources.

176 (12) "Renewable energy project" means the development, construction, deployment,
177 alteration or repair of a project, technology, product, service, function, or measure, or an
178 aggregation of a project, technology, product, service, function, or measure that generates
179 power from renewable energy.

180 (13) "Resilient infrastructure" means a project that builds or enhances infrastructure so

181 that the infrastructure:

182 (a) is planned, designed, and operated in a way that anticipates, prepares for, and
183 adapts to increased natural disasters and extreme weather; and

184 (b) can withstand, respond to, and recover rapidly from disruptions caused by natural
185 disasters and extreme weather conditions.

186 (14) "System efficiency project" means the development, construction, deployment,
187 alteration, or repair of a distributed generation system, energy storage system, smart grid
188 technology, advanced battery system, microgrid system, fuel cell system, or combined heat and
189 power systems.

190 Section 4. Section **63H-9-201** is enacted to read:

191 **Part 2. Utah Clean Energy Fund**

192 **63H-9-201. Creation of the Utah Clean Energy Fund.**

193 (1) There is created an independent body politic and corporate, constituting a public
194 corporation, known as the "Utah Clean Energy Fund."

195 (2) The fund may:

196 (a) sue and be sued;

197 (b) have a seal;

198 (c) acquire real or personal property or any interest in real or personal property, by gift,
199 purchase, foreclosure, deed in lieu of foreclosure, lease, option, or otherwise;

200 (d) prepare and enter into agreements with the federal or state government for the
201 acceptance of funding and grants of money for the purpose of this chapter;

202 (e) enter into an agreement or cooperate with a third party to provide for enhanced
203 leveraging of money of the fund, additional financing mechanisms, or any other program or
204 combination of programs for the purpose of expanding the scope of financial assistance
205 available from the fund;

206 (f) bind the fund and the board to terms of an agreement entered into pursuant to this
207 chapter;

208 (g) apply for and accept gifts, grants, and donations from any reputable source
209 acceptable to the board for the purpose of carrying out this chapter; and

210 (h) seek to qualify for federal funding including qualifying as a Community
211 Development Financial Institution under Section 4702 of the United States Code, and if

212 approved as a Community Development Financial Institution, the fund would be treated as a
213 qualified community development entity for purposes of Internal Revenue Code, Section 45D
214 and Section 1400(m).

215 (3) The fund is an independent entity, as defined in Section 63E-1-102, and subject to
216 the requirements of Title 63E, Chapter 1, Independent Entities Act, and Title 63E, Chapter 2,
217 Independent Corporations Act.

218 (4) The fund:

219 (a) shall be an organization described in Internal Revenue Code, Section 501(c), and
220 exempt from taxation under Internal Revenue Code, Section 501(a);

221 (b) shall ensure that no part of the income or assets of the fund shall inure to the benefit
222 of any director, officer, or employee, except as reasonable compensation for services or
223 reimbursement for expenses;

224 (c) may not contribute or otherwise support any political party or candidate for elective
225 office; and

226 (d) may not accept deposits.

227 Section 5. Section **63H-9-202** is enacted to read:

228 **63H-9-202. Board of directors.**

229 (1) (a) The fund is governed by a board of directors consisting of:

230 (i) the following nonvoting members:

231 (A) the director of the Office of Energy Development, or the director's designee;

232 (B) the executive director of the Governor's Office of Economic Development, or the
233 executive director's designee; and

234 (C) the state treasurer, or the state treasurer's designee; and

235 (ii) seven voting public board members appointed by the governor with the advice and
236 consent of the Senate, who shall have among them real estate, financial, project development,
237 or legal expertise in zero and low-emissions energy generation and efficiency, infrastructure,
238 transportation, agriculture, housing, or environmental justice.

239 (b) When appointing a member to the board, the governor shall consider whether the
240 members appointed reflect the gender, ethnic, and geographical diversity of the state and
241 whether the board provides representation to impacted communities.

242 (2) (a) Except as required by Subsection (2)(b), the governor shall appoint the seven

243 public board members to terms of office of four years each.

244 (b) The governor shall, at the time of appointment or reappointment, adjust the length
245 of terms to ensure that the terms of voting board members are staggered so that approximately
246 half of the voting members of the board are appointed every two years.

247 (3) (a) A public board member of the fund may be removed from office for cause either
248 by the governor or by an affirmative vote of four board members of the fund.

249 (b) When a vacancy occurs in the public board members for any reason, the governor
250 shall replace the public board member for the unexpired term.

251 (c) A public board member shall hold office for the term of appointment and until the
252 public board member's successor has been appointed and qualified.

253 (d) The governor may appoint a public board member for more than one term.

254 (4) The board shall elect a chair from among the board's members and elect a chair
255 each year thereafter.

256 (5) The board shall meet at least quarterly, and may meet at other times upon the call of
257 the chair.

258 (6) Four members of the board constitute a quorum. A majority vote of the quorum is
259 required to take action with respect to any matter unless otherwise specified in the board's
260 bylaws.

261 (7) The board shall adopt bylaws for the board's own management and government.

262 (8) The executive director shall staff the board.

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

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

266 (b) Section [63A-3-107](#); and

267 (c) rules made by the Division of Finance according to Sections [63A-3-106](#) and
268 [63A-3-107](#).

269 (10) The board may hire independent legal counsel and enter into an agreement with
270 the Office of the Attorney General to provide legal services.

271 Section 6. Section **63H-9-203** is enacted to read:

272 **63H-9-203. Executive director.**

273 The board shall hire an executive director who shall:

274 (1) manage the day-to-day operations of the fund; and
275 (2) hire and remove staff members to assist in management of day-to-day operations of
276 the fund.

277 Section 7. Section **63H-9-204** is enacted to read:

278 **63H-9-204. Duties and powers of the board.**

279 To carry out the provisions of this chapter:

280 (1) the board shall:

281 (a) ensure that by no later than July 1, 2024, and for the life of the fund, investments
282 are made on a portfolio basis such that returns are sufficient to cover on-going portfolio losses
283 and operating expenses, with the exception of any specific funds or mandates provided to the
284 fund when the fund may invest without a high certainty or requirement of return;

285 (b) leverage private investment in qualified projects through financing mechanisms that
286 support, enhance, and complement private investment;

287 (c) report to the Legislature on an annual basis;

288 (d) ensure that the fund is annually audited using generally accepted auditing standards
289 by an independent certified public accountant; and

290 (e) ensure that the fund:

291 (i) directs 30% of the fund's investment activity to serve impacted communities;

292 (ii) prioritizes qualified projects according to benefits conferred on consumers and
293 impacted communities;

294 (iii) complies with requirements of the Consumer Credit Protection Act, 15 U.S.C. Sec.
295 1601 et seq.;

296 (iv) annually develops and adopts a work program to serve and support the deployment
297 of qualified projects in this state, including projects benefitting impacted communities,
298 single-family and multi-family residential property, commercial, industrial, educational and
299 governmental property, hospitals, nonprofit property, and any other project that advances the
300 purposes of this chapter;

301 (v) develops rules, policies, and procedures that specify the eligibility of borrowers and
302 any other terms or conditions of the financial support to be provided by the fund before
303 financing support is provided for a qualified project;

304 (vi) develops and offers a range of financing structures, forms, and techniques for

305 qualified projects, including, loans, bonds, credit enhancements, guarantees, warehousing,
306 securitization, co-investing, and other financial products and structures;

307 (vii) develops consumer protection standards to be enforced on all investments to
308 ensure the fund and the fund's partners are lending in a responsible and transparent manner that
309 is in the financial interests of the borrowers;

310 (viii) assesses reasonable fees for the financing support and risk management activities
311 provided by the fund in amounts sufficient to cover the reasonable costs of the fund; and

312 (ix) collects and makes available to the public in a centralized database on an Internet
313 website maintained by the fund information regarding rates, terms, and conditions of all
314 financing support transactions, unless the disclosure of such information includes a trade
315 secret, confidential commercial information, or confidential financial information;

316 (f) prepares an annual report for the public on the financing activities of the fund,
317 which report shall specify the investments made in impacted communities required by this
318 section;

319 (g) works with market and program participants to provide information regarding best
320 practices for overseeing qualified projects and information regarding other appropriate
321 consumer protections; and

322 (h) undertakes such other activities as are necessary to carry out this chapter.

323 (2) The board may hire contractors to assist in the implementation of this chapter by
324 the board.

325 Section 8. Section **63H-9-205** is enacted to read:

326 **63H-9-205. Capitalization of the fund.**

327 (1) The fund shall be initially capitalized by money available through gifts, grants,
328 donations, or legislative appropriation.

329 (2) In addition to any money available through gifts, grants, donations, or legislative
330 appropriation to carry out the purposes of this chapter, the board shall identify any other
331 sources of money that may, in the opinion of the board, be used to provide money for the fund.

332 Section 9. **Appropriation.**

333 The following sums of money are appropriated for the fiscal year beginning July 1,
334 2021, and ending June 30, 2022. These are additions to amounts previously appropriated for
335 fiscal year 2022. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures

336 Act, the Legislature appropriates the following sums of money from the funds or accounts
337 indicated for the use and support of the government of the state of Utah.

338 ITEM 1

339 To the Office of Energy Development -- Pass through
340 From the General Fund, One-time \$1,000,000

341 Schedule of Program:

342 Pass through \$1,000,000

343 The Legislature intends that the appropriations provided under this item be used to fund
344 the Utah Clean Energy Fund with \$500,000 being used in fiscal year 2022 and \$500,000 being
345 used in fiscal year 2023. The appropriation is nonlapsing.