

HB0263S01 compared with HB0263

~~text~~ shows text that was in HB0263 but was deleted in HB0263S01.

text shows text that was not in HB0263 but was inserted into HB0263S01.

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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

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- ▶ 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:

None

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

~~{63M-4-901}~~; 63H-9-101, Utah Code Annotated 1953

~~{63M-4-902}~~; 63H-9-102, Utah Code Annotated 1953

~~{63M-4-903}~~; 63H-9-201, Utah Code Annotated 1953

~~{63M-4-904}~~; 63H-9-202, Utah Code Annotated 1953

~~{63M-4-905}~~; 63H-9-203, Utah Code Annotated 1953

~~{63M-4-906}~~; 63H-9-204, Utah Code Annotated 1953

~~{63M-4-907}~~; 63H-9-205, Utah Code Annotated 1953

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

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

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

As used in this title:

- (1) "Authorizing statute" means the statute creating an entity as an independent entity.
- (2) "Committee" means the Retirement and Independent Entities Committee created by Section 63E-1-201.
- (3) "Independent corporation" means a corporation incorporated in accordance with Chapter 2, Independent Corporations Act.
- (4) (a) "Independent entity" means an entity having a public purpose relating to the state or its citizens that is individually created by the state or is given by the state the right to exist and conduct its affairs as an:

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- (i) independent state agency; or
- (ii) independent corporation.
- (b) "Independent entity" includes the:
 - (i) Utah Beef Council, created by Section 4-21-103;
 - (ii) Utah Dairy Commission created by Section 4-22-103;
 - (iii) Heber Valley Historic Railroad Authority created by Section 63H-4-102;
 - (iv) Utah State Railroad Museum Authority created by Section 63H-5-102;
 - (v) Utah Housing Corporation created by Section 63H-8-201;
 - (vi) Utah State Fair Corporation created by Section 63H-6-103;
 - (vii) Utah State Retirement Office created by Section 49-11-201;
 - (viii) School and Institutional Trust Lands Administration created by Section

53C-1-201;

- (ix) School and Institutional Trust Fund Office created by Section 53D-1-201;
- (x) Utah Communications Authority created by Section 63H-7a-201;
- (xi) Utah Energy Infrastructure Authority created by Section 63H-2-201;
- (xii) Utah Capital Investment Corporation created by Section 63N-6-301; [~~and~~]
- (xiii) Military Installation Development Authority created by Section 63H-1-201[;];

and

(xiv) Utah Clean Energy Fund, created by Section ~~63M-4-903~~63H-9-201.

(c) Notwithstanding this Subsection (4), "independent entity" does not include:

- (i) the Public Service Commission of Utah created by Section 54-1-1;
- (ii) an institution within the state system of higher education;
- (iii) a city, county, or town;
- (iv) a local school district;
- (v) a local district under Title 17B, Limited Purpose Local Government Entities - Local

Districts; or

(vi) a special service district under Title 17D, Chapter 1, Special Service District Act.

(5) "Independent state agency" means an entity that is created by the state, but is independent of the governor's direct supervisory control.

(6) "Money held in trust" means money maintained for the benefit of:

- (a) one or more private individuals, including public employees;

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- (b) one or more public or private entities; or
- (c) the owners of a quasi-public corporation.

(7) "Public corporation" means an artificial person, public in ownership, individually created by the state as a body politic and corporate for the administration of a public purpose relating to the state or its citizens.

(8) "Quasi-public corporation" means an artificial person, private in ownership, individually created as a corporation by the state, which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.

Section 2. Section ~~{63M-4-901}~~63H-9-101 is enacted to read:

~~{Part}~~CHAPTER 9. {Utah Clean Energy Fund Act}UTAH CLEAN ENERGY FUND
ACT

Part 1. General Provisions

~~{63M-4-901}~~63H-9-101. Title -- Legislative findings.

(1) This ~~{part}~~chapter is known as the "Utah Clean Energy Fund Act."

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

(a) promoting investments in qualified projects;

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

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

Section 3. Section ~~{63M-4-902}~~63H-9-102 is enacted to read:

~~{63M-4-902}~~63H-9-102. Definitions.

As used in this ~~{part}~~chapter:

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

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

(2) "Board" means the board of directors for the fund established under Section ~~63M-4-904~~63H-9-202.

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

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

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

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

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

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

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

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

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

(7) "Fund" means the Utah Clean Energy Fund created in Section ~~63M-4-903~~63H-9-201.

(8) "Impacted communities" means:

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

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

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

(d) low-income communities, defined as any census block group in which 30% or more of the population are individuals with low income;

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

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

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

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

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

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

(8)(f)(i).

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

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

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

(a) solar resources;

(b) wind resources;

(c) geothermal resources;

(d) nonhazardous, organic biomass;

(e) anaerobic digestion of organic waste streams;

(f) hydropower;

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(g) fuel cells using renewable resources; and

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

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

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

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

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

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

Section 4. Section ~~{63M-4-903}~~63H-9-201 is enacted to read:

Part 2. Utah Clean Energy Fund

~~{63M-4-903}~~63H-9-201. Creation of the Utah Clean Energy Fund.

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

(2) The fund may:

(a) sue and be sued;

(b) have a seal;

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

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

(e) enter into an agreement or cooperate with a third party to provide for enhanced leveraging of money of the fund, additional financing mechanisms, or any other program or

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combination of programs for the purpose of expanding the scope of financial assistance available from the fund;

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

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

(h) seek to qualify for federal funding including qualifying as a Community Development Financial Institution under Section 4702 of the United States Code, and if approved as a Community Development Financial Institution, the fund would be treated as a qualified community development entity for purposes of Internal Revenue Code, Section 45D and Section 1400(m).

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

(4) The fund:

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

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

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

(d) may not accept deposits.

Section 5. Section ~~{63M-4-904}~~63H-9-202 is enacted to read:

~~{63M-4-904}~~63H-9-202. **Board of directors.**

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

(i) the following nonvoting members:

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

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

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

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

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

(2) (a) Except as required by Subsection (2)(b), the governor shall appoint the seven public board members to terms of office of four years each.

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

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

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

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

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

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

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

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

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

(8) The executive director shall staff the board.

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

(a) Section 63A-3-106;

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(b) Section 63A-3-107; and

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

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

Section 6. Section ~~{63M-4-905}~~63H-9-203 is enacted to read:

~~{63M-4-905}~~63H-9-203. **Executive director.**

The board shall hire an executive director who shall:

(1) manage the day-to-day operations of the fund; and

(2) hire and remove staff members to assist in management of day-to-day operations of the fund.

Section 7. Section ~~{63M-4-906}~~63H-9-204 is enacted to read:

~~{63M-4-906}~~63H-9-204. **Duties and powers of the board.**

To carry out the provisions of this ~~{part}~~chapter:

(1) the board shall:

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

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

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

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

(e) ensure that the fund:

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

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

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

(iv) annually develops and adopts a work program to serve and support the deployment

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of qualified projects in this state, including projects benefitting impacted communities, single-family and multi-family residential property, commercial, industrial, educational and governmental property, hospitals, nonprofit property, and any other project that advances the purposes of this ~~{part}~~chapter;

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

(vi) develops and offers a range of financing structures, forms, and techniques for qualified projects, including, loans, bonds, credit enhancements, guarantees, warehousing, securitization, co-investing, and other financial products and structures;

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

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

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

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

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

(h) undertakes such other activities as are necessary to carry out this ~~{part}~~chapter.

(2) The board may hire contractors to assist in the implementation of this ~~{part}~~chapter by the board.

Section 8. Section ~~{63M-4-907}~~63H-9-205 is enacted to read:

~~{63M-4-907}~~63H-9-205. **Capitalization of the fund.**

(1) The fund shall be initially capitalized by money available through gifts, grants,

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donations, or legislative appropriation.

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

Section 9. **Appropriation.**

The following sums of money are appropriated for the fiscal year beginning July 1, 2021, and ending June 30, 2022. These are additions to amounts previously appropriated for fiscal year 2022. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To the Office of Energy Development -- Pass through

<u>From the General Fund, One-time</u>	<u>\$1,000,000</u>
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Schedule of Program:

<u>Pass through</u>	<u>\$1,000,000</u>
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The Legislature intends that the appropriations provided under this item be used to fund the Utah Clean Energy Fund with \$500,000 being used in fiscal year 2022 and \$500,000 being used in fiscal year 2023. The appropriation is nonlapsing.