

**UTAH CLEAN ENERGY FUND**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Joel K. Briscoe**

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

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**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;
  - creating a trigger for the fund to operate;
  - 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:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



28 **63E-1-102**, as last amended by Laws of Utah 2018, Chapter 393

29 ENACTS:

30 **63H-9-101**, Utah Code Annotated 1953

31 **63H-9-102**, Utah Code Annotated 1953

32 **63H-9-201**, Utah Code Annotated 1953

33 **63H-9-202**, Utah Code Annotated 1953

34 **63H-9-203**, Utah Code Annotated 1953

35 **63H-9-204**, Utah Code Annotated 1953

36 **63H-9-205**, Utah Code Annotated 1953



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

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

40 **63E-1-102. Definitions -- List of independent entities.**

41 As used in this title:

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

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

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

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

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

50 (i) independent state agency; or

51 (ii) independent corporation.

52 (b) "Independent entity" includes the:

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

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

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

56 (iv) Utah State Railroad Museum Authority created by Section **63H-5-102**;

57 (v) Utah Housing Corporation created by Section **63H-8-201**;

58 (vi) Utah State Fair Corporation created by Section **63H-6-103**;

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

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

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

92 **Part 1. General Provisions**

93 **63H-9-101. Legislative findings.**

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

96 (1) promoting investments in qualified projects;

97 (2) financing and supporting qualified projects in rural Utah; and

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

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

103 **63H-9-102. Definitions.**

104 As used in this chapter:

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

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

112 (2) "Board" means the board of directors for the fund established under Section  
113 [63H-9-202](#).

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

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

- 121 (a) changes in the price of electricity over time; or  
122 (b) incentive payments designed to induce lower electricity use at times of high market  
123 prices or when system reliability is jeopardized.
- 124 (5) "Electrification" means the installation, construction, or use of induced electric  
125 technology that replaces existing fossil-fuel-based technology.
- 126 (6) (a) "Energy efficiency project" means a project, technology, product, service,  
127 function, or measure, or an aggregation of a project, technology, product, service, function, or  
128 measure, that results in the reduction of energy use required to achieve the same level of  
129 service or output obtained before the application of the project, technology, product, service,  
130 function, or measure, or aggregation.
- 131 (b) "Energy efficiency project" does not include a project relating to power generation  
132 facilities that involve the combustion of fossil fuels, including petroleum or petroleum  
133 products.
- 134 (7) "Fund" means the Utah Clean Energy Fund created in Section [63H-9-201](#).
- 135 (8) "Impacted communities" means:
- 136 (a) communities of color, which include any geographically distinct area the population  
137 of color of which is higher than the average population of color in the state;
- 138 (b) communities that are already or are likely to be the first communities to feel the  
139 direct negative effects of natural disasters and extreme weather changes;
- 140 (c) distressed neighborhoods, demonstrated by indicators of need, including poverty,  
141 childhood obesity rates, academic failure, and rates of juvenile delinquency, adjudication, or  
142 incarceration;
- 143 (d) low-income communities, defined as any census block group in which 30% or more  
144 of the population are individuals with low income;
- 145 (e) low-income households, defined as households with annual income equal to, or less  
146 than, the greater of:
- 147 (i) an amount equal to 80% of the median income of the area in which the household is  
148 located, as reported by the United States Department of Housing and Urban Development; and
- 149 (ii) 200% percent of the federal poverty line; and
- 150 (f) rural areas, which include any area other than:
- 151 (i) a city that has a population of greater than 50,000 inhabitants; and

152 (ii) an urbanized area contiguous and adjacent to a city described in Subsection  
153 (8)(f)(i).

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

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

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

161 (a) solar resources;

162 (b) wind resources;

163 (c) geothermal resources;

164 (d) nonhazardous, organic biomass;

165 (e) anaerobic digestion of organic waste streams;

166 (f) hydropower;

167 (g) fuel cells using renewable resources; and

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

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

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

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

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

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

183 power systems.

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

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

186 **63H-9-201. Creation of the Utah Clean Energy Fund.**

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

189 (b) The fund shall begin operating the day after May 4, 2022, on which the fund  
190 receives in the aggregate at least \$2,000,000 of federal money, either directly from the federal  
191 government or through a state agency, that:

192 (i) meets the purposes of this chapter; and

193 (ii) may be used by the fund.

194 (2) The fund may:

195 (a) sue and be sued;

196 (b) have a seal;

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

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

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

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

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

209 (h) seek to qualify for federal funding including qualifying as a Community  
210 Development Financial Institution under 12 U.S.C. Sec. 4702, and if approved as a Community  
211 Development Financial Institution, the fund would be treated as a qualified community  
212 development entity for purposes of Internal Revenue Code, Section 45D.

213 (3) The fund is an independent entity, as defined in Section [63E-1-102](#), and subject to

214 the requirements of Title 63E, Chapter 1, Independent Entities Act, and Title 63E, Chapter 2,  
215 Independent Corporations Act.

216 (4) The fund:

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

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

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

224 (d) may not act as a depository institution as defined in Section [7-1-103](#).

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

226 **63H-9-202. Board of directors.**

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

228 (i) the following nonvoting members:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

265 (c) rules made by the Division of Finance according to Sections [63A-3-106](#) and  
266 [63A-3-107](#).

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

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

270 **63H-9-203. Executive director.**

271 The board shall hire an executive director who shall:

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

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

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

276 **63H-9-204. Duties and powers of the board.**

277 (1) To carry out this chapter, the board shall:

278 (a) ensure that by no later than July 1, 2025, and for the life of the fund, investments  
279 are made on a portfolio basis such that returns are sufficient to cover on-going portfolio losses  
280 and operating expenses, with the exception of any specific funds or mandates provided to the  
281 fund when the fund may invest without a high certainty or requirement of return;282 (b) leverage private investment in qualified projects through financing mechanisms that  
283 support, enhance, and complement private investment;284 (c) report to the Legislature on an annual basis;285 (d) ensure that the fund is annually audited using generally accepted auditing standards  
286 by an independent certified public accountant;287 (e) ensure that the fund:288 (i) directs 40% of the fund's investment activity to serve impacted communities;289 (ii) prioritizes qualified projects according to benefits conferred on consumers and  
290 impacted communities;291 (iii) complies with requirements of the Consumer Credit Protection Act, 15 U.S.C. Sec.  
292 1601 et seq.;293 (iv) annually develops and adopts a work program to serve and support the deployment  
294 of qualified projects in this state, including projects benefitting impacted communities,  
295 single-family and multi-family residential property, commercial, industrial, educational and  
296 governmental property, hospitals, nonprofit property, and any other project that advances the  
297 purposes of this chapter;298 (v) develops rules, policies, and procedures that specify the eligibility of borrowers and  
299 any other terms or conditions of the financial support to be provided by the fund before  
300 financing support is provided for a qualified project;301 (vi) develops and offers a range of financing structures, forms, and techniques for  
302 qualified projects, including loans, bonds, credit enhancements, guarantees, warehousing,  
303 securitization, co-investing, and other financial products and structures;304 (vii) develops consumer protection standards to be enforced on all investments to  
305 ensure the fund and the fund's partners are lending in a responsible and transparent manner that  
306 is in the financial interests of the borrowers;

307 (viii) assesses reasonable fees for the financing support and risk management activities  
308 provided by the fund in amounts sufficient to cover the reasonable costs of the fund; and  
309 (ix) collects and makes available to the public in a centralized database on an Internet  
310 website maintained by the fund information regarding rates, terms, and conditions of all  
311 financing support transactions, unless the disclosure of such information includes a trade  
312 secret, confidential commercial information, or confidential financial information;  
313 (f) prepares an annual report for the public on the financing activities of the fund,  
314 which shall specify the investments made in impacted communities required by this section;  
315 (g) works with market and program participants to provide information regarding best  
316 practices for overseeing qualified projects and information regarding other appropriate  
317 consumer protections; and  
318 (h) undertakes such other activities as are necessary to carry out this chapter.  
319 (2) The board may hire contractors to assist in the implementation of this chapter by  
320 the board.

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

322 **63H-9-205. Capitalization of the fund.**

323 (1) The fund shall be initially capitalized by money available through gifts, grants,  
324 donations, legislative appropriation, or federal action or programs.

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