

THROUGHPUT INFRASTRUCTURE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses throughput infrastructure.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the Throughput Infrastructure Fund;
- ▶ provides for the first throughput infrastructure project approved by the Office of Energy Development;
- ▶ requires a irrevocable trust account established under an escrow agreement;
- ▶ provides for grant repayments;
- ▶ addresses throughput infrastructure projects from repayment of the first throughput infrastructure project; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

35A-8-302, as last amended by Laws of Utah 2017, Chapter 262



28 [35A-8-308](#), as last amended by Laws of Utah 2017, Chapters 181 and 421

29 ENACTS:

30 [35A-8-309.5](#), Utah Code Annotated 1953

31 RENUMBERS AND AMENDS:

32 [35A-8-310](#), (Renumbered from 35A-8-309, as last amended by Laws of Utah 2017,
33 Chapters 181 and 421)



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

36 Section 1. Section [35A-8-302](#) is amended to read:

37 **[35A-8-302. Definitions.](#)**

38 As used in this part:

39 (1) "Bonus payments" means that portion of the bonus payments received by the
40 United States government under the Leasing Act paid to the state under Section 35 of the
41 Leasing Act, 30 U.S.C. Sec. 191, together with any interest that had accrued on those
42 payments.

43 (2) "Impact board" means the Permanent Community Impact Fund Board created under
44 Section [35A-8-304](#).

45 (3) "Impact fund" means the Permanent Community Impact Fund established by this
46 chapter.

47 (4) "Interlocal agency" means a legal or administrative entity created by a subdivision
48 or combination of subdivisions under the authority of Title 11, Chapter 13, Interlocal
49 Cooperation Act.

50 (5) "Leasing Act" means the Mineral Lands Leasing Act of 1920, 30 U.S.C. Sec. 181 et
51 seq.

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

54 (7) "Qualified depository" means the same as that term is defined in Section [51-7-3](#).

55 [~~(6)~~] (8) "Qualifying sales and use tax distribution reduction" means that, for the
56 calendar year beginning on January 1, 2008, the total sales and use tax distributions a city
57 received under Section [59-12-205](#) were reduced by at least 15% from the total sales and use tax
58 distributions the city received under Section [59-12-205](#) for the calendar year beginning on

59 January 1, 2007.

60 ~~[(7)]~~ (9) "Subdivision" means a county, city, town, county service area, special service
61 district, special improvement district, water conservancy district, water improvement district,
62 sewer improvement district, housing authority, building authority, school district, or public
63 postsecondary institution organized under the laws of this state.

64 ~~[(8)]~~ (10) (a) "Throughput infrastructure project" means the following facilities,
65 whether located within, partially within, or outside of the state:

- 66 (i) a bulk commodities ocean terminal;
- 67 (ii) a pipeline for the transportation of liquid or gaseous hydrocarbons;
- 68 (iii) electric transmission lines and ancillary facilities;
- 69 (iv) a shortline freight railroad and ancillary facilities;
- 70 (v) a plant for producing hydrogen, including the liquification of hydrogen, for use as a
71 fuel in zero emission motor vehicles; or
- 72 (vi) a plant for the production of zero emission hydrogen fueled trucks.

73 (b) "Throughput infrastructure project" includes:

- 74 (i) an ownership interest or a joint or undivided ownership interest in a facility;
- 75 (ii) a membership interest in the owner of a facility; or
- 76 (iii) a contractual right, whether secured or unsecured, to use all or a portion of the
77 throughput, transportation, or transmission capacity of a facility.

78 Section 2. Section **35A-8-308** is amended to read:

79 **35A-8-308. Throughput Infrastructure Fund.**

80 (1) There is created an enterprise fund known as the "Throughput Infrastructure Fund."

81 (2) The ~~[fund]~~ Throughput Infrastructure Fund consists of money generated from the
82 following revenue sources:

83 (a) ~~[all]~~ the amounts transferred to the ~~[fund]~~ Throughput Infrastructure Fund under
84 Subsection 59-12-103(12);

85 (b) ~~[any]~~ voluntary contributions received;

86 (c) appropriations made to the ~~[fund]~~ Throughput Infrastructure Fund by the
87 Legislature; and

88 (d) ~~[all]~~ the amounts received from the repayment of loans ~~[made by the impact board~~
89 under Section ~~35A-8-309~~ or repayable grants under Sections 35A-8-309.5 and 35A-8-310.

90 (3) The state treasurer shall:

91 (a) invest the money in the [~~fund~~] Throughput Infrastructure Fund, pending the
92 applications for grants or loans under Sections 35A-8-309.5 and 35A-8-310, by following the
93 procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

94 (b) deposit [~~all~~] the interest or other earnings derived from those investments into the
95 [~~fund~~] Throughput Infrastructure Fund.

96 Section 3. Section 35A-8-309.5 is enacted to read:

97 **35A-8-309.5. Funding for first throughput infrastructure project -- Administered**
98 **by Office of Energy Development -- Terms.**

99 (1) Upon receipt of an application from an interlocal agency created for the sole
100 purpose of undertaking a throughput infrastructure project that is a bulk commodities ocean
101 terminal, the Office of Economic Development shall grant all of the money in the Throughput
102 Infrastructure Fund, created in Section 35A-8-308, to the interlocal agency if the application
103 demonstrates that the interlocal agency:

104 (a) has taken steps to plan for a bulk commodities ocean terminal; and

105 (b) can comply with Subsections (2) and (3).

106 (2) The interlocal agency shall deposit the grant directly into an irrevocable trust
107 established under an escrow agreement between the interlocal agency and a qualified
108 depository and pending its use by the interlocal agency shall be invested as provided in Title
109 51, Chapter 7, State Money Management Act.

110 (3) The escrow agreement described in Subsection (2) shall:

111 (a) permit the interlocal agency to use up to 2% of the amount on deposit in the
112 irrevocable trust account to pay or reimburse the interlocal agency's costs incurred before the
113 acquisition of the throughput infrastructure project, including:

114 (i) organizational costs;

115 (ii) costs and expenses incurred in the interlocal agency's investigation, review, and
116 negotiation of the interlocal agency's acquisition of the throughput infrastructure project; and

117 (iii) costs of the escrow agreement;

118 (b) provide that the escrow agent shall release the amount remaining on deposit in the
119 trust account after the use described in Subsection (3)(a) only to pay the cost of the throughput
120 infrastructure project, including:

121 (i) amounts for working capital; and
 122 (ii) reserves and transaction costs upon the delivery of a bond, note, or other instrument
 123 issued by the interlocal agency that:

124 (A) provides for the repayment of the grant in annual installments beginning not less
 125 than three years after the throughput infrastructure project commences full commercial
 126 operation;

127 (B) is secured solely by a pledge by the interlocal agency of the net revenues received
 128 from the throughput infrastructure project; and

129 (iii) is otherwise a nonrecourse obligation of the interlocal agency and the members of
 130 the interlocal agency; and

131 (c) contains other terms that are acceptable to the interlocal agency and the qualified
 132 depository.

133 (4) A grant repayment made by the interlocal agency under this section shall be
 134 deposited into the Throughput Infrastructure Fund for use as provided in Section [35A-8-310](#).

135 Section 4. Section **35A-8-310**, which is renumbered from Section 35A-8-309 is
 136 renumbered and amended to read:

137 ~~[35A-8-309].~~ **35A-8-310. Throughput Infrastructure Fund administered**
 138 **by impact board -- Uses -- Review by board -- Annual report.**

139 (1) The impact board shall:

140 ~~[(a) make grants and loans from the Throughput Infrastructure Fund created in Section~~
 141 ~~[35A-8-308](#) for a throughput infrastructure project;]~~

142 ~~[(b) use money transferred to the Throughput Infrastructure Fund in accordance with~~
 143 ~~Subsection [59-12-103](#)(12)]~~

144 (a) use the repayments deposited into the Throughput Infrastructure Fund under
 145 Subsection [35A-8-309.5](#)(4) to provide a loan or grant to finance the cost of acquisition or
 146 construction of a throughput infrastructure project to one or more local political subdivisions,
 147 including a Utah interlocal [entity] agency created under Title 11, Chapter 13, Interlocal
 148 Cooperation Act;

149 ~~[(c)]~~ (b) administer the Throughput Infrastructure Fund in a manner that will keep a
 150 portion of the fund revolving;

151 ~~[(d)]~~ (c) determine provisions for repayment of loans;

152 ~~[(e)]~~ (d) establish criteria for awarding loans and grants; and
153 ~~[(f)]~~ (e) establish criteria for determining eligibility for assistance under this section.

154 (2) The cost of acquisition or construction of a throughput infrastructure project
155 includes amounts for working capital, reserves, transaction costs, and other amounts
156 determined by the impact board to be allocable to a throughput infrastructure project.

157 (3) The impact board may restructure or forgive all or part of a local political
158 subdivision's or interlocal ~~[entity's]~~ agency's obligation to repay loans for extenuating
159 circumstances.

160 (4) ~~[In order to]~~ To receive assistance under this section, a local political subdivision or
161 an interlocal ~~[entity]~~ agency shall submit a formal application containing the information that
162 the impact board requires.

163 (5) (a) The impact board shall:

164 (i) review the proposed uses of the Throughput Infrastructure Fund for a loan or grant
165 before approving the loan or grant and may condition its approval on whatever assurances the
166 impact board considers necessary to ensure that proceeds of the loan or grant will be used in
167 accordance with this section;

168 (ii) ensure that each loan specifies terms for interest deferments, accruals, and
169 scheduled principal repayment; and

170 (iii) ensure that repayment terms are evidenced by bonds, notes, or other obligations of
171 the appropriate local political subdivision or interlocal ~~[entity]~~ agency issued to the impact
172 board and payable from the net revenues of a throughput infrastructure project.

173 (b) An instrument described in Subsection (5)(a)(iii) may be:

174 (i) non-recourse to the local political subdivision or interlocal ~~[entity]~~ agency; and

175 (ii) limited to a pledge of the net revenues from a throughput infrastructure project.

176 (6) (a) Subject to the restriction in Subsection (6)(b), the impact board shall allocate
177 from the Throughput Infrastructure Fund to the board those amounts that are appropriated by
178 the Legislature for the administration of the Throughput Infrastructure Fund.

179 (b) The amount described in Subsection (6)(a) may not exceed 2% of the annual
180 receipts to the fund.

181 (7) The board shall include in the annual written report described in Section
182 [35A-1-109](#):

- 183 (a) the number and type of loans and grants made under this section; and
184 (b) a list of local political subdivisions or interlocal [~~entities~~] agencies that received
185 assistance under this section.