

**Senator Ralph Okerlund** proposes the following substitute bill:

**THROUGHPUT INFRASTRUCTURE AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ralph Okerlund**

House Sponsor: Michael K. McKell

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**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 an escrow 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 and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 AMENDS:

27 [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 [63M-4-401](#), as last amended by Laws of Utah 2017, Chapters 227 and 470

30 ENACTS:

31 [35A-8-309.5](#), Utah Code Annotated 1953

32 RENUMBERS AND AMENDS:

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

34 Chapters 181 and 421)



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

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

38 **[35A-8-302. Definitions.](#)**

39 As used in this part:

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

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

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

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

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

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

55 [~~6~~] (7) "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)] (8) "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)] (9) (a) "Throughput infrastructure project" means the following facilities, whether  
65 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; and

96 (c) contract for trust and escrow services to be used as provided under Section  
97 35A-8-309.5.

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

99 **35A-8-309.5. Funding for first throughput infrastructure project -- Administered**  
100 **by Office of Energy Development -- Terms.**

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

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

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

108 (2) (a) The interlocal agency described in Subsection (1) shall enter into an escrow  
109 agreement with the Office of Energy Development, and the trust and escrow services provider  
110 contracted for under Subsection 35A-8-308(3)(c).

111 (b) The interlocal agency shall deposit the grant directly into the established escrow  
112 account and pending its use by the interlocal agency the grant shall be invested as provided in  
113 Title 51, Chapter 7, State Money Management Act.

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

115 (a) permit the interlocal agency to use up to 2% of the amount on deposit in the escrow  
116 account to pay or reimburse the interlocal agency's costs incurred before the acquisition of the  
117 throughput infrastructure project, including:

118 (i) organizational costs;

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

121 (iii) costs of the escrow agreement;

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

125 (i) amounts for working capital; ~~and~~

126 (ii) reserves and transaction costs upon the delivery of a bond, note, or other instrument  
 127 issued by the interlocal agency that:

128 (A) provides for the repayment of the grant in annual installments beginning not less  
 129 than three years after the throughput infrastructure project commences full commercial  
 130 operation; ~~and~~

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

133 (iii) is otherwise a nonrecourse obligation of the interlocal agency and the members of  
 134 the interlocal agency; and

135 (c) ~~contains~~ contain other terms that are acceptable to the parties to the escrow  
 135a agreement.

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

138 Section 4. Section ~~35A-8-310~~, which is renumbered from Section 35A-8-309 is  
 139 renumbered and amended to read:

140 ~~[35A-8-309].~~ **35A-8-310. Throughput Infrastructure Fund administered**  
 141 **by impact board -- Uses -- Review by board -- Annual report.**

142 (1) The impact board shall:

143 ~~[(a) make grants and loans from the Throughput Infrastructure Fund created in Section~~  
 144 ~~[35A-8-308](#) for a throughput infrastructure project;]~~

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

147 (a) use the repayments deposited into the Throughput Infrastructure Fund under  
 148 Subsection [35A-8-309.5](#)(4) to provide a loan or grant to finance the cost of acquisition or  
 149 construction of a throughput infrastructure project to one or more local political subdivisions,

150 including a Utah interlocal [~~entity~~] agency created under Title 11, Chapter 13, Interlocal  
151 Cooperation Act;

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

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

155 [~~(d)~~] (d) establish criteria for awarding loans and grants; and

156 [~~(e)~~] (e) establish criteria for determining eligibility for assistance under this section.

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

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

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

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

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

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

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

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

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

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

179 (6) (a) Subject to the restriction in Subsection (6)(b), the impact board shall allocate  
180 from the Throughput Infrastructure Fund to the board those amounts that are appropriated by

181 the Legislature for the administration of the Throughput Infrastructure Fund.

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

184 (7) The board shall include in the annual written report described in Section  
185 35A-1-109:

186 (a) the number and type of loans and grants made under this section; and

187 (b) a list of local political subdivisions or interlocal [~~entities~~] agencies that received  
188 assistance under this section.

189 Section 5. Section 63M-4-401 is amended to read:

190 **63M-4-401. Office of Energy Development -- Creation -- Director -- Purpose --**  
191 **Rulemaking regarding confidential information -- Fees.**

192 (1) There is created an Office of Energy Development.

193 (2) (a) The governor's energy advisor shall serve as the director of the office or appoint  
194 a director of the office.

195 (b) The director:

196 (i) shall, if the governor's energy advisor appoints a director under Subsection (2)(a),  
197 report to the governor's energy advisor; and

198 (ii) may appoint staff as funding within existing budgets allows.

199 (c) The office may consolidate energy staff and functions existing in the state energy  
200 program.

201 (3) The purposes of the office are to:

202 (a) serve as the primary resource for advancing energy and mineral development in the  
203 state;

204 (b) implement:

205 (i) the state energy policy under Section 63M-4-301; and

206 (ii) the governor's energy and mineral development goals and objectives;

207 (c) advance energy education, outreach, and research, including the creation of  
208 elementary, higher education, and technical college energy education programs;

209 (d) promote energy and mineral development workforce initiatives; and

210 (e) support collaborative research initiatives targeted at Utah-specific energy and  
211 mineral development.

212 (4) By following the procedures and requirements of Title 63J, Chapter 5, Federal  
213 Funds Procedures Act, the office may:

214 (a) seek federal grants or loans;

215 (b) seek to participate in federal programs; and

216 (c) in accordance with applicable federal program guidelines, administer federally  
217 funded state energy programs.

218 (5) The office shall perform the duties required by Sections [11-42a-106](#), [35A-8-309.5](#),  
219 [59-7-614.7](#), [59-10-1029](#), Part 5, Alternative Energy Development Tax Credit Act, and Part 6,  
220 High Cost Infrastructure Development Tax Credit Act.

221 (6) (a) For purposes of administering this section, the office may make rules, by  
222 following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative  
223 Rulemaking Act, to maintain as confidential, and not as a public record, information that the  
224 office receives from any source.

225 (b) The office shall maintain information the office receives from any source at the  
226 level of confidentiality assigned by the source.

227 (7) The office may charge application, filing, and processing fees in amounts  
228 determined by the office in accordance with Section [63J-1-504](#) as dedicated credits for  
229 performing office duties described in this part.