

Representative James R. Gowans proposes the following substitute bill:

RENEWABLE ENERGY AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: James R. Gowans

This act modifies the Public Utilities title to address purchases of power from independent energy producers and to enact the Renewable Energy Act. The act modifies definitions. The act modifies the chapter addressing small power production and cogeneration facilities and includes renewable energy production facilities under that chapter. The act enacts the Renewable Energy Act. This act amends the Sales and Use Tax Act to create an exception related to renewable energy production facilities. This act makes technical changes. This act has an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

54-2-1, as last amended by Chapter 212, Laws of Utah 2001

59-12-104, as last amended by Chapters 117, 138, 217 and 286, Laws of Utah 2002

59-12-105, as last amended by Chapter 262, Laws of Utah 2001

ENACTS:

54-12-101, Utah Code Annotated 1953

54-17-101, Utah Code Annotated 1953

54-17-102, Utah Code Annotated 1953

54-17-201, Utah Code Annotated 1953

54-17-202, Utah Code Annotated 1953

54-17-203, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

54-12-102, (Renumbered from 54-12-1, as enacted by Chapter 180, Laws of Utah 1985)



26 **54-12-201**, (Renumbered from 54-12-2, as last amended by Chapter 4, Laws of Utah
27 1989)

28 **54-12-203**, (Renumbered from 54-12-3, as enacted by Chapter 180, Laws of Utah 1985)

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

30 Section 1. Section **54-2-1** is amended to read:

31 **54-2-1. Definitions.**

32 As used in this title:

33 (1) "Avoided costs" means the incremental costs to an electrical corporation of electric
34 energy or capacity or both which, due to the purchase of electric energy or capacity or both
35 from small power production or cogeneration facilities, the electrical corporation would not
36 have to generate itself or purchase from another electrical corporation.

37 (2) (a) Except as provided in Subsection (2)(b), "biomass" means:

38 (i) material from a plant or tree that is planted for the purpose of being used to produce
39 energy; or

40 (ii) other organic matter that is available on a renewable basis, including:

41 (A) animal waste;

42 (B) methane produced:

43 (I) at landfills; or

44 (II) as a byproduct of the treatment of wastewater residuals; and

45 (C) aquatic plants.

46 (b) "Biomass" does not include:

47 (i) black liquor;

48 (ii) treated woods; or

49 (iii) biomass from municipal solid waste other than methane produced:

50 (A) at landfills; or

51 (B) as a byproduct of the treatment of wastewater residuals.

52 ~~(2)~~ (3) "Cogeneration facility":

53 (a) means a facility which produces:

54 (i) electric energy; and

55 (ii) steam or forms of useful energy, including heat, which are used for industrial,
56 commercial, heating, or cooling purposes; and

57 (b) is a qualifying cogeneration facility under federal law.

58 [~~(3)~~] (4) "Commission" means the Public Service Commission of Utah.

59 [~~(4)~~] (5) "Commissioner" means a member of the commission.

60 [~~(5)~~] (6) (a) "Corporation" includes an association, and a joint stock company having
61 any powers or privileges not possessed by individuals or partnerships.

62 (b) "Corporation" does not include towns, cities, counties, conservancy districts,
63 improvement districts, or other governmental units created or organized under any general or
64 special law of this state.

65 [~~(6)~~] (7) "Distribution electrical cooperative" includes an electrical corporation that:

66 (a) is a cooperative;

67 (b) conducts a business that includes the retail distribution of electricity the cooperative
68 purchases or generates for the cooperative's members; and

69 (c) is required to allocate or distribute savings in excess of additions to reserves and
70 surplus on the basis of patronage to the cooperative's:

71 (i) members; or

72 (ii) patrons.

73 [~~(7)~~] (8) "Electrical corporation" includes every corporation, cooperative association,
74 and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing
75 any electric plant, or in any way furnishing electric power for public service or to its consumers
76 or members for domestic, commercial, or industrial use, within this state, except independent
77 energy producers, and except where electricity is generated on or distributed by the producer
78 solely for the producer's own use, or the use of the producer's tenants, or for the use of
79 members of an association of unit owners formed under Title 57, Chapter 8, Condominium
80 Ownership Act, and not for sale to the public generally.

81 [~~(8)~~] (9) "Electric plant" includes all real estate, fixtures, and personal property owned,
82 controlled, operated, or managed in connection with or to facilitate the production, generation,
83 transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits,
84 ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying
85 conductors used or to be used for the transmission of electricity for light, heat, or power.

86 [~~(9)~~] (10) "Gas corporation" includes every corporation and person, their lessees,
87 trustees, and receivers, owning, controlling, operating, or managing any gas plant for public

88 service within this state or for the selling or furnishing of natural gas to any consumer or
89 consumers within the state for domestic, commercial, or industrial use, except in the situation
90 that gas is:

91 (a) [~~gas is~~] made or produced on, and distributed by the maker or producer through,
92 private property:

93 (i) solely for the maker's or producer's own use or the use of the maker's or producer's
94 tenants; and

95 (ii) not for sale to others;

96 (b) [~~gas is~~] compressed on private property solely for the owner's own use or the use of
97 the owner's employees as a motor vehicle fuel; or

98 (c) [~~gas is~~] compressed by a retailer of motor vehicle fuel on the retailer's property
99 solely for sale as a motor vehicle fuel.

100 [~~(10)~~] (11) "Gas plant" includes all real estate, fixtures, and personal property owned,
101 controlled, operated, or managed in connection with or to facilitate the production, generation,
102 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

103 [~~(11)~~] (12) "Heat corporation" includes every corporation and person, their lessees,
104 trustees, and receivers, owning, controlling, operating, or managing any heating plant for public
105 service within this state.

106 [~~(12)~~] (13) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances,
107 and personal property controlled, operated, or managed in connection with or to facilitate the
108 production, generation, transmission, delivery, or furnishing of artificial heat.

109 (b) "Heating plant" does not include either small power production facilities or
110 cogeneration facilities.

111 (14) "Hydroelectric facility" means a facility that produces electricity with water as the
112 sole source of energy.

113 [~~(13)~~] (15) "Independent energy producer" means [~~every~~] an electrical corporation,
114 person, corporation, [~~or~~] government entity, [~~their lessees, trustees, or receivers,~~] or their
115 lessee, trustee, or receiver that [own, operate, control, or manage] owns, operates, controls, or
116 manages:

117 (a) a small power production facility;

118 (b) a renewable energy production facility; or

119 (c) a cogeneration facility.

120 ~~[(14)]~~ (16) "Private telecommunications system" includes all facilities for the
121 transmission of signs, signals, writing, images, sounds, messages, data, or other information of
122 any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio
123 facilities, that are owned, controlled, operated, or managed by a corporation or person,
124 including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that
125 corporation or person and not for the shared use with or resale to any other corporation or
126 person on a regular basis.

127 ~~[(15)]~~ (17) (a) "Public utility" includes every railroad corporation, gas corporation,
128 electrical corporation, distribution electrical cooperative, wholesale electrical cooperative,
129 telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat
130 corporation, and independent energy producer not described in Subsection ~~[(15)]~~ (17)(d),
131 where the service is performed for, or the commodity delivered to, the public generally, or in
132 the case of a gas corporation or electrical corporation where the gas or electricity is sold or
133 furnished to any member or consumers within the state for domestic, commercial, or industrial
134 use.

135 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
136 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
137 or independent energy producer not described in Subsection ~~[(15)]~~ (17)(d), performs a service
138 for or delivers a commodity to the public, it is considered to be a public utility, subject to the
139 jurisdiction and regulation of the commission and this title.

140 (ii) If a gas corporation, independent energy producer not described in Subsection
141 ~~[(15)]~~ (17)(d), or electrical corporation sells or furnishes gas or electricity to any member or
142 consumers within the state, for domestic, commercial, or industrial use, for which any
143 compensation or payment is received, it is considered to be a public utility, subject to the
144 jurisdiction and regulation of the commission and this title.

145 (c) Any corporation or person not engaged in business exclusively as a public utility as
146 defined in this section is governed by this title in respect only to the public utility owned,
147 controlled, operated, or managed by the corporation or person, and not in respect to any other
148 business or pursuit.

149 (d) An independent energy producer is exempt from the jurisdiction and regulations of

150 the commission if it meets the requirements of Subsection [~~(15)~~] (17)(d)(i), (ii), or (iii), or any
151 combination of these:

152 (i) the commodity or service is produced or delivered, or both, by an independent
153 energy producer solely for the uses exempted in Subsection [~~(7)~~] (8) or for the use of
154 state-owned facilities;

155 (ii) the commodity or service is sold by an independent energy producer to an electrical
156 corporation; or

157 (iii) (A) the commodity or service delivered by the independent energy producer is
158 delivered to an entity which controls, is controlled by, or affiliated with the independent energy
159 producer or to a user located on real property managed by the independent energy producer;
160 and

161 (B) the real property on which the service or commodity is used is contiguous to real
162 property which is owned or controlled by the independent energy producer. Parcels of real
163 property separated solely by public roads or easements for public roads shall be considered as
164 contiguous for purposes of this Subsection [~~(15)~~] (17).

165 (e) Any person or corporation defined as an electrical corporation or public utility
166 under this section may continue to serve its existing customers subject to any order or future
167 determination of the commission in reference to the right to serve those customers.

168 (f) (i) "Public utility" does not include any person that is otherwise considered a public
169 utility under this Subsection [~~(15)~~] (17) solely because of that person's ownership of an interest
170 in an electric plant, cogeneration facility, or small power production facility in this state if all of
171 the following conditions are met:

172 (A) the ownership interest in the electric plant, cogeneration facility, or small power
173 production facility is leased to:

174 (I) a public utility, and that lease has been approved by the commission;

175 (II) a person or government entity that is exempt from commission regulation as a
176 public utility; or

177 (III) a combination of Subsections [~~(15)~~] (17)(f)(i)(A)(I) and (II);

178 (B) the lessor of the ownership interest identified in Subsection [~~(15)~~] (17)(f)(i)(A) is:

179 (I) primarily engaged in a business other than the business of a public utility; or

180 (II) a person whose total equity or beneficial ownership is held directly or indirectly by

181 another person engaged in a business other than the business of a public utility; and

182 (C) the rent reserved under the lease does not include any amount based on or
183 determined by revenues or income of the lessee.

184 (ii) Any person that is exempt from classification as a public utility under Subsection
185 ~~[(15)]~~ (17)(f)(i) shall continue to be so exempt from classification following termination of the
186 lessee's right to possession or use of the electric plant for so long as the former lessor does not
187 operate the electric plant or sell electricity from the electric plant. If the former lessor operates
188 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a
189 period of 90 days following termination, or for a longer period that is ordered by the
190 commission. This period may not exceed one year. A change in rates that would otherwise
191 require commission approval may not be effective during the 90-day or extended period
192 without commission approval.

193 (g) "Public utility" does not include any person that provides financing for, but has no
194 ownership interest in an electric plant, small power production facility, or cogeneration facility.
195 In the event of a foreclosure in which an ownership interest in an electric plant, small power
196 production facility, or cogeneration facility is transferred to a third-party financier of an electric
197 plant, small power production facility, or cogeneration facility, then that third-party financier is
198 exempt from classification as a public utility for 90 days following the foreclosure, or for a
199 longer period that is ordered by the commission. This period may not exceed one year.

200 (h) (i) The distribution or transportation of natural gas for use as a motor vehicle fuel
201 does not cause the distributor or transporter to be a "public utility," unless the commission,
202 after notice and a public hearing, determines by rule that it is in the public interest to regulate
203 the distributors or transporters, but the retail sale alone of compressed natural gas as a motor
204 vehicle fuel may not cause the seller to be a "public utility."

205 (ii) In determining whether it is in the public interest to regulate the distributors or
206 transporters, the commission shall consider, among other things, the impact of the regulation
207 on the availability and price of natural gas for use as a motor fuel.

208 ~~[(16)]~~ (18) "Purchasing utility" means any electrical corporation that is required to
209 purchase electricity from small power production or cogeneration facilities pursuant to the
210 Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

211 ~~[(17)]~~ (19) "Railroad" includes every commercial, interurban, and other railway, other

212 than a street railway, and each branch or extension of a railway, by any power operated,
213 together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots,
214 union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all
215 other real estate, fixtures, and personal property of every kind used in connection with a
216 railway owned, controlled, operated, or managed for public service in the transportation of
217 persons or property.

218 ~~[(18)]~~ (20) "Railroad corporation" includes every corporation and person, their lessees,
219 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
220 service within this state.

221 (21) (a) "Renewable energy" means:

222 (i) biomass;

223 (ii) geothermal energy;

224 (iii) solar energy; or

225 (iv) wind energy.

226 (b) "Renewable energy" does not include energy produced from or by:

227 (i) any fossil fuel including:

228 (A) natural gas;

229 (B) oil; or

230 (C) propane;

231 (ii) a hydroelectric facility; or

232 (iii) a nuclear generation facility.

233 (22) (a) "Renewable energy production facility" means a facility that:

234 (i) is not a hydroelectric facility; and

235 (ii) uses renewable energy to produce electricity.

236 (b) A facility is a renewable energy production facility regardless of whether the
237 facility is:

238 (i) connected to an electric grid; or

239 (ii) located on the premises of an electricity consumer.

240 ~~[(19)]~~ (23) (a) "Sewerage corporation" includes every corporation and person, their
241 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage
242 system for public service within this state.

243 (b) "Sewerage corporation" does not include private sewerage companies engaged in
244 disposing of sewage only for their stockholders, or towns, cities, counties, conservancy
245 districts, improvement districts, or other governmental units created or organized under any
246 general or special law of this state.

247 ~~[(20)]~~ (24) "Small power production facility" means a facility ~~[which]~~ that:

248 (a) ~~[produces electric energy solely by the use, as a primary energy source, of biomass,~~
249 ~~waste, renewable resources, geothermal resources, or any combination of them]~~ uses renewable
250 energy to produce electricity;

251 (b) has a power production capacity that, together with any other facilities located at
252 the same site, is not greater than 80 megawatts; and

253 (c) is a qualifying small power production facility under federal law.

254 ~~[(21)]~~ (25) "Telegraph corporation" includes every corporation and person, their
255 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line
256 for public service within this state.

257 ~~[(22)]~~ (26) "Telegraph line" includes all conduits, ducts, poles, wires, cables,
258 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
259 controlled, operated, or managed in connection with or to facilitate communication by
260 telegraph, whether that communication be had with or without the use of transmission wires.

261 ~~[(23)]~~ (27) (a) "Telephone corporation" means any corporation or person, and their
262 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,
263 manages, or resells a public telecommunications service as defined in Section 54-8b-2.

264 (b) "Telephone corporation" does not mean a corporation, partnership, or firm
265 providing:

266 (i) intrastate telephone service offered by a provider of cellular, personal
267 communication systems ~~[(PCS)]~~, or other commercial mobile radio service as defined in 47
268 U.S.C. Sec. 332 that has been issued a covering license by the Federal Communications
269 Commission;

270 (ii) Internet service; or

271 (iii) resold intrastate toll service.

272 ~~[(24)]~~ (28) "Telephone line" includes all conduits, ducts, poles, wires, cables,
273 instruments, and appliances, and all other real estate, fixtures, and personal property owned,

274 controlled, operated, or managed in connection with or to facilitate communication by
275 telephone whether that communication is had with or without the use of transmission wires.

276 [~~(25)~~] (29) "Transportation of persons" includes every service in connection with or
277 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
278 carriage, and delivery of that person and that person's baggage.

279 [~~(26)~~] (30) "Transportation of property" includes every service in connection with or
280 incidental to the transportation of property, including in particular its receipt, delivery,
281 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and
282 hauling, and the transmission of credit by express companies.

283 [~~(27)~~] (31) "Water corporation" includes every corporation and person, their lessees,
284 trustees, and receivers, owning, controlling, operating, or managing any water system for
285 public service within this state. It does not include private irrigation companies engaged in
286 distributing water only to their stockholders, or towns, cities, counties, water conservancy
287 districts, improvement districts, or other governmental units created or organized under any
288 general or special law of this state.

289 [~~(28)~~] (32) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
290 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,
291 and personal property owned, controlled, operated, or managed in connection with or to
292 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
293 appointment, apportionment, or measurement of water for power, fire protection, irrigation,
294 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

295 (b) "Water system" does not include private irrigation companies engaged in
296 distributing water only to their stockholders.

297 [~~(29)~~] (33) "Wholesale electrical cooperative" includes every electrical corporation that
298 is:

299 (a) in the business of the wholesale distribution of electricity it has purchased or
300 generated to its members and the public; and

301 (b) required to distribute or allocate savings in excess of additions to reserves and
302 surplus to members or patrons on the basis of patronage.

303 Section 2. Section **54-12-101** is enacted to read:

304 **CHAPTER 12. INDEPENDENT ENERGY PRODUCERS ACT**

305 **Part 1. General Provisions**

306 **54-12-101. Title.**

307 This chapter is known as the "Independent Energy Producers Act."

308 Section 3. Section **54-12-102**, which is renumbered from Section 54-12-1 is
309 renumbered and amended to read:

310 ~~[54-12-1].~~ **54-12-102. Legislative policy.**

311 (1) The Legislature declares that ~~[in order]~~ to promote the more rapid development of
312 new sources of electrical energy, to maintain the economic vitality of the state through the
313 continuing production of goods and the employment of its people, and to promote the efficient
314 ~~[utilization]~~ use and distribution of energy, it is desirable and necessary to:

315 (a) encourage independent energy producers to competitively develop sources of
316 electric energy not otherwise available to Utah businesses, residences, and industries served by
317 electrical corporations~~[-];~~ and

318 (b) to remove unnecessary barriers to energy transactions involving independent energy
319 producers and electrical corporations.

320 (2) It is the policy of this state to:

321 (a) encourage the development of:

322 (i) small power production facilities;

323 (ii) renewable energy production facilities; and

324 (iii) cogeneration facilities~~[-, to];~~

325 (b) promote a diverse array of economical and permanently sustainable energy
326 resources in an environmentally acceptable manner~~[-, and to];~~

327 (c) conserve ~~[our]~~ the state's finite and expensive energy resources; and

328 (d) provide for ~~[their]~~ the state resource's most efficient and economic ~~[utilization]~~ use.

329 Section 4. Section **54-12-201**, which is renumbered from Section 54-12-2 is
330 renumbered and amended to read:

331 **Part 2. Purchases from Independent Energy Producers**

332 ~~[54-12-2].~~ **54-12-201. Purchase of power from independent energy producers.**

333 (1) ~~[Purchasing utilities]~~ A purchasing utility shall offer to purchase power from one or
334 more independent energy producers.

335 (2) (a) The commission shall establish reasonable rates, terms, and conditions for the

336 purchase or sale ~~[of electricity or electrical generating capacity, or both,]~~ between a purchasing
337 utility and an independent energy producer~~[-]~~ of:

338 (i) electricity;

339 (ii) electrical generating capacity; or

340 (iii) both electricity and electrical generating capacity.

341 (b) In establishing ~~[these]~~ the rates, terms, and conditions~~[-]~~ described in Subsection
342 (2)(a) the commission shall ~~[either]~~:

343 (i) establish a procedure under which ~~[small power producers and cogenerators offer]~~
344 an independent energy producer offers competitive bids for the sale of ~~[power]~~ electricity or
345 electrical generating capacity to one or more purchasing utilities; or

346 (ii) devise ~~[an alternative]~~ a method ~~[which]~~ that considers ~~[the]~~ a purchasing utility's
347 avoided costs. ~~[The]~~

348 (c) If the commission devises a method that considers a purchasing utility's avoided
349 costs, the capacity component of the avoided costs shall reflect the purchasing utility's
350 long-term deferral or cancellation of generating units ~~[which]~~ that may result from the purchase
351 of ~~[power]~~ electricity or electrical generating capacity from the independent energy ~~[producers]~~
352 producer.

353 (3) ~~[Purchasing utilities]~~ A purchasing utility and an independent energy ~~[producers]~~
354 producer may agree to rates, terms, or conditions for the sale of electricity or electrical capacity
355 ~~[which]~~ that differ from the rates, terms, and conditions adopted by the commission under
356 Subsection (2).

357 (4) ~~[The]~~ In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
358 Act, the commission may ~~[adopt further]~~ make rules ~~[which]~~ in addition to the rates, terms, and
359 conditions described in Subsection (2) that encourage the development of ~~[small power~~
360 production and cogeneration] facilities of independent energy producers.

361 (5) Notwithstanding the other provisions of this chapter, an electrical corporation is not
362 required to acquire from a renewable energy production facility the following that is in excess
363 of the electrical corporation's obligations under the program established by the commission
364 under Section 54-17-202:

365 (a) electricity;

366 (b) electric generation capacity; or

367 (c) both electricity and electric generation capacity.

368 Section 5. Section **54-12-203**, which is renumbered from Section 54-12-3 is
369 renumbered and amended to read:

370 **[54-12-3]. 54-12-203. Recovery of investment costs.**

371 (1) The commission may not [consider any purchasing utility's purchase of power from
372 an independent energy producer as a reason for disallowing] disallow recovery of [the] a
373 purchasing utility's investment costs [for facilities which] that are in use prior to signing a
374 contract for the purchase of power from an independent energy producer on the basis that the
375 purchasing utility:

376 (a) purchased power from the independent energy producer; or

377 (b) acquired electricity or electric generating capacity from a renewable energy
378 production facility for the purpose of complying with Chapter 17, Renewable Energy Act.

379 (2) (a) The commission shall allow an electrical corporation to recover through just and
380 reasonable tariffs, rates, and charges from retail customers within the state costs that are
381 prudently incurred in complying with Chapter 17, Renewable Energy Act.

382 (b) For purposes of this Subsection (2), the commission shall review renewable energy
383 costs in light of general industry costs for:

384 (i) renewable energy; and

385 (ii) technologies with similar characteristics.

386 Section 6. Section **54-17-101** is enacted to read:

387 **CHAPTER 17. RENEWABLE ENERGY ACT**

388 **Part 1. General Provisions**

389 **54-17-101. Title.**

390 This chapter is known as the "Renewable Energy Act."

391 Section 7. Section **54-17-102** is enacted to read:

392 **54-17-102. Definitions.**

393 As used in this chapter, "renewable energy contract" means a contract executed by an
394 electrical corporation:

395 (1) under which the electrical corporation purchases:

396 (a) a renewable energy credit created under the program described in Section

397 54-17-202; or

398 (b) both:
399 (ii) electricity; and
400 (iii) a renewable energy credit created under the program described in Section
401 54-17-202; and
402 (2) if the electricity or renewable energy credit acquired under the contract is used by
403 the electrical corporation to satisfy the electrical corporation's obligation under the program
404 described in Section 54-17-202.

405 Section 8. Section **54-17-201** is enacted to read:

406 **Part 2. Renewable Energy Development Program**
407 **54-17-201. Targets for development.**

408 There is created a renewable energy development program in this state to encourage the
409 development of renewable energy production facilities in this state that are not in operation as
410 of May 5, 2003 in the following target amounts:

411 (1) a total of 250 megawatts of electricity generated from one or more renewable
412 energy production facilities that are installed in this state:

413 (a) after May 5, 2003; and

414 (b) by no later than December 31, 2005; and

415 (2) a total of 400 megawatts of electricity generated from one or more renewable
416 energy production facilities that are installed in this state:

417 (a) after May 5, 2003; and

418 (b) by no later than December 31, 2009.

419 Section 9. Section **54-17-202** is enacted to read:

420 **54-17-202. Commission to develop program related to generation and acquisition**
421 **of renewable energy.**

422 (1) In accordance with this section, the commission shall adopt a program under which:

423 (a) there is established requirements for the generation or acquisition of electricity or
424 electric generation capacity by electrical corporations that sell electricity to retail customers in
425 this state; and

426 (b) the requirements described in Subsection (1)(a) are designed to meet the target
427 amounts described in Section 54-17-201.

428 (2) The program described in Subsection (1) shall be:

- 429 (a) adopted by the commission by:
430 (i) order; or
431 (ii) rule made in accordance with Title 63, Chapter 46a, Utah Administrative
432 Rulemaking Act; and
433 (b) adopted by no later than October 1, 2003.
434 (3) The program described in Subsection (2):
435 (a) may not require an electrical corporation to take any action until on or after January
436 1, 2005;
437 (b) may not require an electrical corporation to generate or acquire electricity or
438 electric generation capacity from a renewable energy production facility unless the commission
439 determines that the price of electricity or electric generation capacity generated or acquired
440 from a renewable energy production facility is competitive to the price of electricity or electric
441 generation capacity generated or acquired from an energy production facility that is:
442 (i) not a renewable energy production facility; and
443 (ii) installed on or after May 5, 2003;
444 (c) shall provide for an exception from any requirements placed under the program
445 adopted under this section for any electrical corporation that has annual retail sales in the state
446 of less than 1,000,000 megawatt hours to the extent that the electrical corporation generates or
447 acquires by contract as of May 5, 2003 more electricity or electric generation capacity than is
448 necessary to meet the needs of the retail customers of the electrical corporation;
449 (d) may provide greater incentives for certain forms of renewable energy such as solar
450 energy;
451 (e) may exclude from the program certain forms of renewable energy;
452 (f) may provide incentives for reduction in the consumption of electricity;
453 (g) shall require an electrical corporation to report to the commission information that
454 assists the commission in monitoring whether or not:
455 (i) the targets created in Section 54-17-201 are being met; and
456 (ii) the electrical corporation is complying with the program adopted by the
457 commission in accordance with this section;
458 (h) may provide requirements related to the terms and conditions of a renewable energy
459 contract that:

460 (i) to extent that the renewable energy contract is subject to Chapter 12, Independent
461 Energy Producers Act, are consistent with Section 54-12-201; and

462 (ii) may include provisions related to:

463 (A) approval of the renewable energy contract; and

464 (B) recovery by the electrical corporation of costs incurred under the renewable energy
465 contract; and

466 (g) establishes a process by which renewable energy credits may be used by an
467 electrical corporation to meet obligations imposed on the electrical corporation under the
468 program adopted under this section.

469 Section 10. Section **54-17-203** is enacted to read:

470 **54-17-203. Reporting -- Study.**

471 (1) (a) The commission shall report to the Public Utilities and Technology Interim
472 Committee by no later than November 30, 2003 regarding the program adopted by the
473 commission under Section 54-17-202.

474 (b) The report required by this Subsection (1) shall include:

475 (i) whether the target amounts specified in Section 54-17-201 should be modified;

476 (ii) a summary of the requirements of the program adopted under Section 54-17-202;

477 (iii) whether or not legislation is required to implement the program adopted under
478 Subsection 54-17-202; and

479 (iii) any recommendations as to other incentives that could be adopted to encourage the
480 development of renewable energy production facilities in the state.

481 (2) (a) During the calendar year 2008, the commission shall create a task force to
482 analyze the benefits and costs to the state of the renewable energy program created under
483 Section 54-17-202.

484 (b) The task force required by this Subsection (2) shall include representatives from:

485 (i) electrical corporations;

486 (ii) municipal corporations;

487 (iii) small and large retail electric customers;

488 (iv) state agencies that have an interest in:

489 (A) energy issues;

490 (B) consumer interests; or

- 491 (C) environmental issues;
492 (v) public interest environmental groups;
493 (vi) public interest consumer groups;
494 (vii) developers of renewable resources; and
495 (viii) any other group that the commission considers appropriate.
496 (c) The task force created under this Subsection (2) shall issue a report to the
497 commission on or before December 31, 2008 that:
498 (i) summarizes the analysis of the task force; and
499 (ii) makes recommendations as to the need for any changes to the program created by
500 the commission under Section 54-17-202.

501 Section 11. Section **59-12-104** is amended to read:

502 **59-12-104. Exemptions.**

503 The following sales and uses are exempt from the taxes imposed by this chapter:

504 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
505 under Chapter 13, Motor and Special Fuel Tax Act;

506 (2) sales to the state, its institutions, and its political subdivisions; however, this
507 exemption does not apply to sales of:

508 (a) construction materials except:

509 (i) construction materials purchased by or on behalf of institutions of the public
510 education system as defined in Utah Constitution Article X, Section 2, provided the
511 construction materials are clearly identified and segregated and installed or converted to real
512 property which is owned by institutions of the public education system; and

513 (ii) construction materials purchased by the state, its institutions, or its political
514 subdivisions which are installed or converted to real property by employees of the state, its
515 institutions, or its political subdivisions; or

516 (b) tangible personal property in connection with the construction, operation,
517 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
518 providing additional project capacity, as defined in Section 11-13-103;

519 (3) sales of food, beverage, and dairy products from vending machines in which the
520 proceeds of each sale do not exceed \$1 if the vendor or operator of the vending machine reports
521 an amount equal to 150% of the cost of items as goods consumed;

522 (4) sales of food, beverage, dairy products, similar confections, and related services to
523 commercial airline carriers for in-flight consumption;

524 (5) sales of parts and equipment for installation in aircraft operated by common carriers
525 in interstate or foreign commerce;

526 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
527 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
528 exhibitor, distributor, or commercial television or radio broadcaster;

529 (7) sales of cleaning or washing of tangible personal property by a coin-operated
530 laundry or dry cleaning machine;

531 (8) (a) except as provided in Subsection (8)(b), sales made to or by religious or
532 charitable institutions in the conduct of their regular religious or charitable functions and
533 activities, if the requirements of Section 59-12-104.1 are fulfilled;

534 (b) the exemption provided for in Subsection (8)(a) does not apply to the following
535 sales, uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an
536 organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue
537 Code:

538 (i) retail sales of Olympic merchandise;

539 (ii) except as provided in Subsection (51), admissions or user fees described in
540 Subsection 59-12-103(1)(f);

541 (iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i),
542 except for accommodations and services:

543 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter
544 Games of 2002;

545 (B) exclusively used by:

546 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
547 Olympic Winter Games of 2002; or

548 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic
549 Winter Games of 2002; and

550 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
551 2002 does not receive reimbursement; or

552 (iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or

553 rental of a vehicle:

554 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter
555 Games of 2002;

556 (B) exclusively used by:

557 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
558 Olympic Winter Games of 2002; or

559 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic
560 Winter Games of 2002; and

561 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
562 2002 does not receive reimbursement;

563 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of
564 this state which are made to bona fide nonresidents of this state and are not afterwards
565 registered or used in this state except as necessary to transport them to the borders of this state;

566 (10) sales of medicine;

567 (11) sales or use of property, materials, or services used in the construction of or
568 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

569 (12) (a) sales of meals served by:

570 (i) the following if the meals are not available to the general public:

571 (A) a church; or

572 (B) a charitable institution;

573 (ii) an institution of higher education if:

574 (A) the meals are not available to the general public; or

575 (B) the meals are prepaid as part of a student meal plan offered by the institution of
576 higher education; or

577 (b) inpatient meals provided at:

578 (i) a medical facility; or

579 (ii) a nursing facility;

580 (13) isolated or occasional sales by persons not regularly engaged in business, except
581 the sale of vehicles or vessels required to be titled or registered under the laws of this state in
582 which case the tax is based upon:

583 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;

584 or

585 (b) in the absence of a bill of sale or other written evidence of value, the then existing
586 fair market value of the vehicle or vessel being sold as determined by the commission;

587 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:

588 (i) machinery and equipment:

589 (A) used in the manufacturing process;

590 (B) having an economic life of three or more years; and

591 (C) used:

592 (I) to manufacture an item sold as tangible personal property; and

593 (II) in new or expanding operations in a manufacturing facility in the state; and

594 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:

595 (A) have an economic life of three or more years;

596 (B) are used in the manufacturing process in a manufacturing facility in the state;

597 (C) are used to replace or adapt an existing machine to extend the normal estimated
598 useful life of the machine; and

599 (D) do not include repairs and maintenance;

600 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:

601 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
602 Subsection (14)(a)(ii) is exempt;

603 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in
604 Subsection (14)(a)(ii) is exempt; and

605 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection
606 (14)(a)(ii) is exempt;

607 (c) for purposes of this Subsection (14), the commission shall by rule define the terms
608 "new or expanding operations" and "establishment"; and

609 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
610 commission shall:

611 (i) review the exemptions described in Subsection (14)(a) and make recommendations
612 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be
613 continued, modified, or repealed; and

614 (ii) include in its report:

- 615 (A) the cost of the exemptions;
- 616 (B) the purpose and effectiveness of the exemptions; and
- 617 (C) the benefits of the exemptions to the state;
- 618 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
- 619 (i) tooling;
- 620 (ii) special tooling;
- 621 (iii) support equipment;
- 622 (iv) special test equipment; or
- 623 (v) parts used in the repairs or renovations of tooling or equipment described in
- 624 Subsections (15)(a)(i) through (iv); and
- 625 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
- 626 (i) the tooling, equipment, or parts are used or consumed exclusively in the
- 627 performance of any aerospace or electronics industry contract with the United States
- 628 government or any subcontract under that contract; and
- 629 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
- 630 title to the tooling, equipment, or parts is vested in the United States government as evidenced
- 631 by:
- 632 (A) a government identification tag placed on the tooling, equipment, or parts; or
- 633 (B) listing on a government-approved property record if placing a government
- 634 identification tag on the tooling, equipment, or parts is impractical;
- 635 (16) intrastate movements of:
- 636 (a) freight by common carriers; or
- 637 (b) passengers:
- 638 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial
- 639 Classification Manual of the federal Executive Office of the President, Office of Management
- 640 and Budget;
- 641 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard
- 642 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 643 Management and Budget, if the transportation originates and terminates within a county of the
- 644 first, second, or third class; or
- 645 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard

646 Industrial Classification Manual of the federal Executive Office of the President, Office of
647 Management and Budget:

648 (A) a horse-drawn cab; or

649 (B) a horse-drawn carriage.

650 (17) sales of newspapers or newspaper subscriptions;

651 (18) tangible personal property, other than money, traded in as full or part payment of
652 the purchase price, except that for purposes of calculating sales or use tax upon vehicles not
653 sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

654 (a) the bill of sale or other written evidence of value of the vehicle being sold and the
655 vehicle being traded in; or

656 (b) in the absence of a bill of sale or other written evidence of value, the then existing
657 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
658 commission;

659 (19) sprays and insecticides used to control insects, diseases, and weeds for
660 commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those
661 sprays and insecticides used in the processing of the products;

662 (20) (a) (i) sales of tangible personal property used or consumed primarily and directly
663 in farming operations, including sales of irrigation equipment and supplies used for agricultural
664 production purposes, whether or not they become part of real estate and whether or not
665 installed by farmer, contractor, or subcontractor, but not sales of:

666 (A) machinery, equipment, materials, and supplies used in a manner that is incidental
667 to farming, such as hand tools with a unit purchase price not in excess of \$250, and
668 maintenance and janitorial equipment and supplies;

669 (B) tangible personal property used in any activities other than farming, such as office
670 equipment and supplies, equipment and supplies used in sales or distribution of farm products,
671 in research, or in transportation; or

672 (C) any vehicle required to be registered by the laws of this state, without regard to the
673 use to which the vehicle is put; or

674 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
675 tangible personal property is exempt under Subsection (20)(a); or

676 (b) sales of hay;

677 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or
678 other agricultural produce if sold by a producer during the harvest season;

679 (22) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp
680 Program, 7 U.S.C. Sec. 2011 et seq.;

681 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
682 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
683 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
684 manufacturer, processor, wholesaler, or retailer;

685 (24) property stored in the state for resale;

686 (25) property brought into the state by a nonresident for his or her own personal use or
687 enjoyment while within the state, except property purchased for use in Utah by a nonresident
688 living and working in Utah at the time of purchase;

689 (26) property purchased for resale in this state, in the regular course of business, either
690 in its original form or as an ingredient or component part of a manufactured or compounded
691 product;

692 (27) property upon which a sales or use tax was paid to some other state, or one of its
693 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
694 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
695 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
696 Act;

697 (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
698 person for use in compounding a service taxable under the subsections;

699 (29) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under
700 the special supplemental nutrition program for women, infants, and children established in 42
701 U.S.C. Sec. 1786;

702 (30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers,
703 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
704 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
705 Manual of the federal Executive Office of the President, Office of Management and Budget;

706 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State
707 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of

708 this state and are not thereafter registered or used in this state except as necessary to transport
709 them to the borders of this state;

710 (32) sales of tangible personal property to persons within this state that is subsequently
711 shipped outside the state and incorporated pursuant to contract into and becomes a part of real
712 property located outside of this state, except to the extent that the other state or political entity
713 imposes a sales, use, gross receipts, or other similar transaction excise tax on it against which
714 the other state or political entity allows a credit for taxes imposed by this chapter;

715 (33) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah
716 where a sales or use tax is not imposed, even if the title is passed in Utah;

717 (34) amounts paid for the purchase of telephone service for purposes of providing
718 telephone service;

719 (35) fares charged to persons transported directly by a public transit district created
720 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

721 (36) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

722 (37) (a) 45% of the sales price of any new manufactured home; and

723 (b) 100% of the sales price of any used manufactured home;

724 (38) sales relating to schools and fundraising sales;

725 (39) sales or rentals of home medical equipment or supplies;

726 (40) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
727 Section 72-11-102; and

728 (b) the commission shall by rule determine the method for calculating sales exempt
729 under Subsection (40)(a) that are not separately metered and accounted for in utility billings;

730 (41) sales to a ski resort of:

731 (a) snowmaking equipment;

732 (b) ski slope grooming equipment;

733 (c) passenger ropeways as defined in Section 72-11-102; or

734 (d) parts used in the repairs or renovations of equipment or passenger ropeways
735 described in Subsections (41)(a) through (c);

736 (42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

737 (43) sales or rentals of the right to use or operate for amusement, entertainment, or
738 recreation a coin-operated amusement device as defined in Section 59-12-102;

739 (44) sales of cleaning or washing of tangible personal property by a coin-operated car
740 wash machine;

741 (45) sales by the state or a political subdivision of the state, except state institutions of
742 higher education as defined in Section 53B-3-102, of:

743 (a) photocopies; or

744 (b) other copies of records held or maintained by the state or a political subdivision of
745 the state;

746 (46) (a) amounts paid:

747 (i) to a person providing intrastate transportation to an employer's employee to or from
748 the employee's primary place of employment;

749 (ii) by an:

750 (A) employee; or

751 (B) employer; and

752 (iii) pursuant to a written contract between:

753 (A) the employer; and

754 (B) (I) the employee; or

755 (II) a person providing transportation to the employer's employee; and

756 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
757 commission may for purposes of Subsection (46)(a) make rules defining what constitutes an
758 employee's primary place of employment;

759 (47) amounts paid for admission to an athletic event at an institution of higher
760 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
761 20 U.S.C. Sec. 1681 et seq.;

762 (48) sales of telephone service charged to a prepaid telephone calling card;

763 (49) (a) sales of:

764 (i) hearing aids;

765 (ii) hearing aid accessories; or

766 (iii) except as provided in Subsection (49)(b), parts used in the repairs or renovations
767 of hearing aids or hearing aid accessories; and

768 (b) for purposes of this Subsection (49), notwithstanding Subsection (49)(a)(iii),
769 "parts" does not include batteries;

770 (50) (a) sales made to or by:
771 (i) an area agency on aging; or
772 (ii) a senior citizen center owned by a county, city, or town; or
773 (b) sales made by a senior citizen center that contracts with an area agency on aging;
774 (51) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as
775 admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter
776 Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing
777 Committee for the Olympic Winter Games of 2002 in accordance with requirements of the
778 International Olympic Committee; and
779 (b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic
780 Winter Games of 2002 shall make at least two reports during the 2000 interim:
781 (i) to the:
782 (A) Olympic Coordination Committee; and
783 (B) Revenue and Taxation Interim Committee; and
784 (ii) regarding the status of:
785 (A) agreements relating to the funding of public safety services for the Olympic Winter
786 Games of 2002;
787 (B) agreements relating to the funding of services, other than public safety services, for
788 the Olympic Winter Games of 2002;
789 (C) other agreements relating to the Olympic Winter Games of 2002 as requested by
790 the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;
791 (D) other issues as requested by the Olympic Coordination Committee or the Revenue
792 and Taxation Interim Committee; or
793 (E) a combination of Subsections (51)(b)(ii)(A) through (D);
794 (52) (a) beginning on July 1, 2001, through June 30, 2004, and subject to Subsection
795 (52)(b), a sale or lease of semiconductor fabricating or processing materials regardless of
796 whether the semiconductor fabricating or processing materials:
797 (i) actually come into contact with a semiconductor; or
798 (ii) ultimately become incorporated into real property;
799 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease
800 described in Subsection (52)(a) is exempt;

801 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease
802 described in Subsection (52)(a) is exempt; and

803 (iii) beginning on July 1, 2003, through June 30, 2004, the entire amount of the sale or
804 lease described in Subsection (52)(a) is exempt; and

805 (c) each year on or before the November interim meeting, the Revenue and Taxation
806 Interim Committee shall:

807 (i) review the exemption described in this Subsection (52) and make recommendations
808 concerning whether the exemption should be continued, modified, or repealed; and

809 (ii) include in the review under this Subsection (52)(c):

810 (A) the cost of the exemption;

811 (B) the purpose and effectiveness of the exemption; and

812 (C) the benefits of the exemption to the state;

813 (53) an amount paid by or charged to a purchaser for accommodations and services
814 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
815 59-12-104.2;

816 (54) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
817 sports event registration certificate in accordance with Section 41-3-306 for the event period
818 specified on the temporary sports event registration certificate; or

819 (55) sales or uses of electricity, if the sales or uses are:

820 (a) made under a tariff adopted by the Public Service Commission of Utah only for
821 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
822 source, as designated in the tariff by the Public Service Commission of Utah; and

823 (b) for an amount of electricity that is:

824 (i) unrelated to the amount of electricity used by the person purchasing the electricity
825 under the tariff described in Subsection (55)(a); ~~and~~

826 (ii) equivalent to the number of kilowatthours specified in the tariff described in
827 Subsection (55)(a) that may be purchased under the tariff described in Subsection (55)(a)~~[-];~~
828 and

829 (56) the following purchases or leases made on or after July 1, 2003 but on or before
830 July 1, 2008, for an establishment described in NAICS Code 22111 of the federal 1997 North
831 American Industry Classifications System Manual, Executive Office of the President, Office of

832 Management and Budget, that is a renewable energy production facility defined in Section
833 54-2-1:

834 (a) purchases or leases of machinery and equipment:

835 (i) used in the process of generating electricity;

836 (ii) having an economic life of three or more years; and

837 (iii) used in a renewable energy production facility in the state that is installed or
838 expanded on or after July 1, 2003; and

839 (b) purchases or leases of normal operating replacements that:

840 (i) have an economic life of three or more years;

841 (ii) are used in the generation of electricity in a renewable energy production facility in
842 the state;

843 (iii) are used to replace or adapt an existing machine to extend the normal estimated
844 useful life of the machine; and

845 (iv) do not include repairs and maintenance.

846 Section 12. Section **59-12-105** is amended to read:

847 **59-12-105. Certain exempt sales to be reported -- Penalties.**

848 (1) An owner, vendor, or purchaser shall report to the commission the amount of sales
849 or uses exempt under Subsection 59-12-104(14), (20), (40), (41), [~~or~~] (52), or (56).

850 (2) Except as provided in Subsections (3) and (4), if the owner, vendor, or purchaser
851 fails to report the full amount of the exemptions granted under Subsection 59-12-104(14), (20),
852 (40), (41), [~~or~~] (52), (56) on the owner's, vendor's, or purchaser's original filed return, the
853 commission shall impose a penalty equal to the lesser of:

854 (a) 10% of the sales and use tax that would have been imposed if the exemption had not
855 applied; or

856 (b) \$1,000.

857 (3) Notwithstanding Subsection (2), the commission may not impose a penalty under
858 Subsection (2) if the owner, vendor, or purchaser files an amended return containing the
859 amount of the exemption prior to the owner, vendor, or purchaser receiving a notice of audit
860 from the commission.

861 (4) (a) Notwithstanding Subsection (2), the commission may waive, reduce, or
862 compromise a penalty imposed under this section if the commission finds there are reasonable

863 grounds for the waiver, reduction, or compromise.

864 (b) If the commission waives, reduces, or compromises a penalty under Subsection

865 (4)(a), the commission shall make a record of the grounds for waiving, reducing, or

866 compromising the penalty.

867 Section 13. **Effective date.**

868 The amendments in this act to Sections 59-12-104 and 59-12-105 take effect on July 1,

869 2003.