

1                   **ECONOMIC DEVELOPMENT INCENTIVES FOR**  
2                   **ALTERNATIVE ENERGY PROJECTS**

3                   2009 GENERAL SESSION

4                   STATE OF UTAH

5                   **Chief Sponsor: Kevin S. Garn**

6                   Senate Sponsor: Sheldon L. Killpack

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7  
8 **LONG TITLE**

9 **General Description:**

10           This bill enacts the Renewable Energy Development Act within the Governor's Office  
11 of Economic Development.

12 **Highlighted Provisions:**

13           This bill:

14           ▶ provides for the creation of renewable energy development zones by the Governor's  
15 Office of Economic Development and provides definitions related to renewable  
16 energy development zones and renewable energy development projects undertaken  
17 within those zones;

18           ▶ provides for an economic development tax credit to business entities upon meeting  
19 standards set by the Governor's Office of Economic Development that are based on  
20 requirements established in the act;

21           ▶ provides for the issuance of a renewable energy development tax credit certificate  
22 by the office, with certain restrictions and conditions, such as specifying the  
23 maximum amount of tax credit a business entity may earn over the life of a  
24 renewable energy project;

25           ▶ provides that a renewable energy project must include direct investment within the  
26 boundaries of a zone, must bring new incremental jobs to the state, must include  
27 significant capital investment or the creation of high paying jobs or significant



28 purchases from Utah vendors and providers, and must generate new state revenues;  
 29       ▶ requires the business entity to submit to audits for verification of a claimed tax  
 30 credit;  
 31       ▶ provides for certification by the office of a business entity's eligibility for a claimed  
 32 tax credit; and  
 33       ▶ requires for an annual report to the Legislature and the Utah Tax Review  
 34 Commission on the success of the renewable energy development project tax  
 35 incentive program.

36 **Monies Appropriated in this Bill:**

37       None

38 **Other Special Clauses:**

39       This bill provides an effective date.

40       This bill has retrospective operation for a taxable year beginning on or after January 1,  
 41 2009.

42 **Utah Code Sections Affected:**

43 AMENDS:

44       **59-7-614.2**, as enacted by Laws of Utah 2008, Chapter 372

45       **59-10-1107**, as enacted by Laws of Utah 2008, Chapter 372

46 ENACTS:

47       **63M-1-2801**, Utah Code Annotated 1953

48       **63M-1-2802**, Utah Code Annotated 1953

49       **63M-1-2803**, Utah Code Annotated 1953

50       **63M-1-2804**, Utah Code Annotated 1953

51       **63M-1-2805**, Utah Code Annotated 1953

52       **63M-1-2806**, Utah Code Annotated 1953



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

55       Section 1. Section **59-7-614.2** is amended to read:

56       **59-7-614.2. Refundable economic development tax credit.**

57       (1) As used in this section:

58       (a) "Business entity" means a taxpayer that meets the definition of "business entity" as

59 defined in Section 63M-1-2403 or 63M-1-2803.

60 (b) "Office" means the Governor's Office of Economic Development.

61 (2) [~~For taxable years beginning on or after January 1, 2008, a~~] A business entity may  
62 claim a refundable tax credit for economic development.

63 (3) The tax credit under this section is the amount listed as the tax credit amount on the  
64 tax credit certificate that the office issues to the business entity for the taxable year.

65 (4) (a) In accordance with any rules prescribed by the commission under Subsection  
66 (4)(b), the commission shall make a refund to a business entity that claims a tax credit under  
67 this section if the amount of the tax credit exceeds the business entity's tax liability for a  
68 taxable year.

69 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
70 commission may make rules providing procedures for making a refund to a business entity as  
71 required by Subsection (4)(a).

72 (5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the  
73 Utah Tax Review Commission shall study the tax credit allowed by this section and make  
74 recommendations to the Revenue and Taxation Interim Committee and the Workforce Services  
75 and Community and Economic Development Interim Committee concerning whether the tax  
76 credit should be continued, modified, or repealed.

77 (b) For purposes of the study required by this Subsection (5), the office shall provide  
78 the following information to the Utah Tax Review Commission:

79 (i) the amount of tax credit that the office grants to each business entity for each  
80 calendar year;

81 (ii) the criteria that the office uses in granting a tax credit;

82 (iii) the new state revenues generated by each business entity for each calendar year;

83 (iv) the information contained in the office's latest report to the Legislature under  
84 Section 63M-1-2406 or 63M-1-2806; and

85 (v) any other information that the Utah Tax Review Commission requests.

86 (c) The Utah Tax Review Commission shall ensure that its recommendations under  
87 Subsection (5)(a) include an evaluation of:

88 (i) the cost of the tax credit to the state;

89 (ii) the purpose and effectiveness of the tax credit; and

90 (iii) the extent to which the state benefits from the tax credit.

91 Section 2. Section **59-10-1107** is amended to read:

92 **59-10-1107. Refundable economic development tax credit.**

93 (1) As used in this section:

94 (a) "Business entity" means a claimant, estate, or trust that meets the definition of  
95 "business entity" as defined in Section 63M-1-2403 or 63M-1-2803.

96 (b) "Office" means the Governor's Office of Economic Development.

97 (2) [~~For taxable years beginning on or after January 1, 2008, a~~] A business entity may  
98 claim a refundable tax credit for economic development.

99 (3) The tax credit under this section is the amount listed as the tax credit amount on the  
100 tax credit certificate that the office issues to the business entity for the taxable year.

101 (4) (a) In accordance with any rules prescribed by the commission under Subsection  
102 (4)(b), the commission shall make a refund to a business entity that claims a tax credit under  
103 this section if the amount of the tax credit exceeds the business entity's tax liability for a  
104 taxable year.

105 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
106 commission may make rules providing procedures for making a refund to a business entity as  
107 required by Subsection (4)(a).

108 (5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the  
109 Utah Tax Review Commission shall study the tax credit allowed by this section and make  
110 recommendations to the Revenue and Taxation Interim Committee and the Workforce Services  
111 and Community and Economic Development Interim Committee concerning whether the tax  
112 credit should be continued, modified, or repealed.

113 (b) For purposes of the study required by this Subsection (5), the office shall provide  
114 the following information to the Utah Tax Review Commission:

115 (i) the amount of tax credit the office grants to each taxpayer for each calendar year;

116 (ii) the criteria the office uses in granting a tax credit;

117 (iii) the new state revenues generated by each taxpayer for each calendar year;

118 (iv) the information contained in the office's latest report to the Legislature under  
119 Section 63M-1-2406 or 63M-1-2806; and

120 (v) any other information that the Utah Tax Review Commission requests.

121 (c) The Utah Tax Review Commission shall ensure that its recommendations under  
122 Subsection (5)(a) include an evaluation of:

- 123 (i) the cost of the tax credit to the state;
- 124 (ii) the purpose and effectiveness of the tax credit; and
- 125 (iii) the extent to which the state benefits from the tax credit.

126 Section 3. Section **63M-1-2801** is enacted to read:

127 **Part 28. Renewable Energy Development Act**

128 **63M-1-2801. Title.**

129 This part is known as the "Renewable Energy Development Act."

130 Section 4. Section **63M-1-2802** is enacted to read:

131 **63M-1-2802. Findings.**

132 (1) The Legislature finds that:

133 (a) to foster and develop the renewable energy industry in Utah, including generation  
134 and manufacturing, is a public purpose necessary to assure the health and welfare of Utah's  
135 citizens and the growth of the state's economy;

136 (b) Utah loses prospective high paying jobs, new economic growth, and corresponding  
137 incremental new state and local revenues to competing states due to a wide variety of  
138 competing renewable energy incentives offered by those states; and

139 (c) renewable energy initiatives and interests of state and local officials should be  
140 aligned and united in renewable energy generation and related manufacturing.

141 (2) This part is enacted to:

142 (a) increase generation of renewable energy and create high paying jobs in the  
143 renewable energy industry, thereby growing the state's economy and corresponding state and  
144 local revenues by providing tax credits to attract new renewable energy projects and assist in  
145 the expansion of existing renewable energy projects located within renewable energy  
146 development zones in the state; and

147 (b) provide a cooperative and unified working relationship between state and local  
148 renewable energy development efforts.

149 Section 5. Section **63M-1-2803** is enacted to read:

150 **63M-1-2803. Definitions.**

151 As used in this part:

- 152           (1) "Business entity" means a person that:
- 153           (a) conducts business in Utah; and
- 154           (b) enters into an agreement with the office that qualifies the person to receive a tax
- 155 credit under Section 59-7-614.2 or 59-10-1107.
- 156           (2) "High paying jobs" means the annual wages of employment positions in a business
- 157 entity that compare favorably against the average wage of a community in which the
- 158 employment positions will exist.
- 159           (3) "New incremental jobs" means employment positions that are:
- 160           (a) not shifted from one jurisdiction in the state to another jurisdiction in the state; and
- 161           (b) created in addition to the baseline count of employment positions that existed
- 162 within the business entity before the new commercial project.
- 163           (4) "New state revenues" means:
- 164           (a) incremental new state sales and use tax revenues generated as a result of a
- 165 renewable energy project in a renewable energy development zone that a business entity pays
- 166 under Title 59, Chapter 12, Sales and Use Tax Act;
- 167           (b) incremental new state tax revenues that a business entity pays as a result of a
- 168 renewable energy project in a renewable energy development zone under:
- 169           (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
- 170           (ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and
- 171 Information;
- 172           (iii) Title 59, Chapter 10, Part 2, Trusts and Estates;
- 173           (iv) Title 59, Chapter 10, Part 4, Withholding of Tax; or
- 174           (v) a combination of Subsections (4)(b)(i) through (4)(b)(iv);
- 175           (c) incremental new state tax revenues generated as individual income taxes under
- 176 Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information,
- 177 paid by employees of the new commercial project as evidenced by payroll records from the
- 178 business entity; or
- 179           (d) a combination of Subsections (4)(a) through (4)(c).
- 180           (5) "Office" means the Governor's Office of Economic Development.
- 181           (6) "Renewable energy" means the energy generation as defined in Subsection
- 182 10-19-102(11).

183           (7) "Renewable energy development zone" means a renewable energy development  
184 zone created under Section 63M-1-2804.

185           (8) "Renewable energy project" means a development opportunity that involves  
186 renewable energy generation or manufacturing of equipment used directly in renewable energy  
187 generation of increased energy efficiency.

188           (9) "Tax credit" means an economic development tax credit created by Section  
189 59-7-614.2 or 59-10-1107.

190           (10) "Tax credit amount" means the amount the office lists as a tax credit on a tax  
191 credit certificate for a taxable year.

192           (11) "Tax credit certificate" means a certificate issued by the office that:

193           (a) lists the name of the applicant;

194           (b) lists the applicant's taxpayer identification number;

195           (c) lists the amount of the tax credit that the office awards the applicant for a taxable  
196 year; and

197           (d) may include other information as determined by the office.

198           Section 6. Section **63M-1-2804** is enacted to read:

199           **63M-1-2804. Creation of renewable energy development zones -- Tax credits.**

200           (1) The office, with advice from the board, may create a renewable energy  
201 development zone in the state that satisfies the following requirements:

202           (a) the area is zoned commercial, industrial, manufacturing, business park, research  
203 park, or other appropriate use in a community approved master plan;

204           (b) the request to create a renewable energy development zone has been forwarded to  
205 the office after first being approved by an appropriate local government entity; and

206           (c) the local government entity has committed or will commit to provide incentives,  
207 which may include an abatement of some or all of the property taxes for up to 30 years for a  
208 renewable energy project qualified under this part.

209           (2) (a) By following the procedures and requirements of Title 63G, Chapter 4,  
210 Administrative Procedures Act, the office shall set standards that a business entity must meet to  
211 qualify for a tax credit under this part.

212           (b) The office shall ensure that those standards include the following requirements:

213           (i) the renewable energy project must be within a renewable energy development zone;

214 (ii) the renewable energy project includes direct investment within the geographic  
215 boundaries of the renewable energy development zone;

216 (iii) the renewable energy project brings new incremental jobs to Utah;

217 (iv) the renewable energy project includes significant capital investment, the creation  
218 of high paying jobs, or significant purchases from Utah vendors and providers, or any  
219 combination of these three economic factors;

220 (v) the renewable energy project generates new state revenues; and

221 (vi) the business entity qualifying for the tax credit meets the requirements of Section  
222 63M-1-2405.

223 (3) (a) The office, with advice from the board, may enter into an agreement with a  
224 business entity authorizing a tax credit to a business entity that meets the standards established  
225 under Subsection (2).

226 (b) The office may not authorize or commit a tax credit to a business entity that  
227 exceeds 100% of the new state revenues generated by the business entity's renewable energy  
228 project over the life of a renewable energy project or 20 years, whichever is less.

229 (4) The office shall ensure that the agreement with the business entity that is described  
230 in Subsection (3):

231 (a) details the requirements that the business entity must meet to qualify for a tax credit  
232 under this part;

233 (b) specifies the maximum amount of tax credit that the business entity may earn over  
234 the life of the renewable energy project;

235 (c) establishes the length of time the business entity may claim a tax credit;

236 (d) requires the business entity to retain records supporting its claim for a tax credit for  
237 at least four years after the business entity claims a tax credit under this part; and

238 (e) requires the business entity to submit to audits for verification of the tax credit  
239 claimed.

240 Section 7. Section **63M-1-2805** is enacted to read:

241 **63M-1-2805. Qualifications for tax credit -- Procedure.**

242 (1) The office shall certify a business entity's eligibility for a tax credit as provided in  
243 this section.

244 (2) A business entity seeking to receive a tax credit shall provide the office with:



245 (a) an application for the tax credit certificate;  
246 (b) documentation of the new state revenues generated from the business entity's  
247 renewable energy project that were paid during the preceding calendar year; and  
248 (c) a document that expressly directs and authorizes the State Tax Commission to  
249 disclose to the office the business entity's returns and other information concerning the business  
250 entity that would otherwise be subject to confidentiality under Section 59-1-403 or Section  
251 6103 of the Internal Revenue Code.

252 (3) (a) The office shall submit the document referred to in Subsection (2)(c) to the  
253 State Tax Commission.

254 (b) Upon receipt of the document, the State Tax Commission shall provide the office  
255 with the information requested by the office that the business entity directed or authorized the  
256 State Tax Commission to provide to the office in the document referred to in Subsection (2)(c).

257 (4) If after review of the information provided by the business entity and the State Tax  
258 Commission the office determines that the documentation provided by the business entity is  
259 not substantially accurate, the office shall either:

260 (a) deny the tax credit; or

261 (b) inform the business entity that the documentation was inadequate and ask the  
262 business entity to submit new documentation.

263 (5) If after review of the information provided by the entity and the State Tax  
264 Commission the office determines that the documentation provided by the business entity is  
265 substantially accurate, the office shall, based upon the documentation:

266 (a) determine the amount of the tax credit to be granted to the business entity;

267 (b) issue a tax credit certificate to the business entity; and

268 (c) provide a duplicate copy of the tax credit certificate to the State Tax Commission.

269 (6) A business entity may not claim a tax credit under this part unless the business  
270 entity has a tax credit certificate issued by the office.

271 (7) A business entity that claims the credit under this section shall retain the tax credit  
272 certificate in accordance with Section 59-7-614.2 or 59-10-1107.

273 Section 8. Section **63M-1-2806** is enacted to read:

274 **63M-1-2806. Report to the Legislature.**

275 The office shall report annually to the Legislature's Workforce Services and Community

276 and Economic Development Interim Committee and the Utah Tax Review Commission  
277 describing:

278 (1) its success in attracting renewable energy projects to renewable energy  
279 development zones under this part and the corresponding increase in new increment jobs;

280 (2) the amount of tax credits promised and the period of time over which the tax credits  
281 will be paid; and

282 (3) the economic impact on the state related to generating new state revenues and  
283 providing tax credits under this part.

284 **Section 9. Effective date -- Retrospective operation.**

285 (1) Except as provided in Subsection (2), this bill takes effect on May 12, 2009.

286 (2) The amendments to Sections 59-7-614.2 and 59-10-1107 have retrospective  
287 operation for a taxable year beginning on or after January 1, 2009.

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**Legislative Review Note**  
**as of 2-24-09 10:01 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 430 - Economic Development Incentives for Alternative Energy Projects**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will likely reduce Education Fund revenue by \$187,500 and General Fund revenue by \$2,400,000 in FY 2010 and FY 2011. The tax credits authorized by the bill will forgo up to \$9.600,000 in General Fund revenue and \$412,500 in Education Fund revenue annually thereafter. Funds will be diverted from the Education Fund and General Fund for payment to businesses, but will not be appropriated until performance has been demonstrated.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	(\$2,400,000)	(\$2,400,000)
Education Fund	\$0	\$0	\$0	\$0	(\$187,500)	(\$187,500)
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$2,587,500)</b>	<b>(\$2,587,500)</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals. Local governments could see a decrease in property tax revenue over time. Businesses involved in renewable energy development could receive a tax break for 100 percent of taxes owed.

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