

TAX CREDIT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas V. Sagers

Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill creates tax credit provisions related to hydrogen.

Highlighted Provisions:

This bill:

- ▶ creates a nonrefundable gross receipts tax credit for certain commercial energy systems that use hydrogen electrolysis systems;
- ▶ provides a process for obtaining a written certification to claim the gross receipts tax credit;
- ▶ provides rulemaking authority to the Office of Energy Development and the State Tax Commission to administer the written certification process to claim the gross receipts tax credit;
- ▶ creates nonrefundable corporate and individual income tax credits for certain commercial energy systems that use hydrogen electrolysis energy systems;
- ▶ provides a process for a lessee or assignee assigned a renewable energy systems income tax credit to obtain a written certification;
- ▶ defines "infrastructure" to include hydrogen fuel production or distribution projects for purposes of qualifying for a high cost infrastructure development tax credit; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 59-7-614, as last amended by Laws of Utah 2019, Chapter 247

34 59-10-1014, as last amended by Laws of Utah 2019, Chapter 247

35 63M-4-602, as last amended by Laws of Utah 2019, Chapter 501

36 ENACTS:

37 59-8-301, Utah Code Annotated 1953



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

40 Section 1. Section 59-7-614 is amended to read:

41 **59-7-614. Renewable energy systems tax credits -- Definitions -- Certification --**
42 **Rulemaking authority.**

43 (1) As used in this section:

44 (a) (i) "Active solar system" means a system of equipment that is capable of:

45 (A) collecting and converting incident solar radiation into thermal, mechanical, or
46 electrical energy; and

47 (B) transferring a form of energy described in Subsection (1)(a)(i)(A) by a separate
48 apparatus to storage or to the point of use.

49 (ii) "Active solar system" includes water heating, space heating or cooling, and
50 electrical or mechanical energy generation.

51 (b) "Biomass system" means a system of apparatus and equipment for use in:

52 (i) converting material into biomass energy, as defined in Section 59-12-102; and

53 (ii) transporting the biomass energy by separate apparatus to the point of use or storage.

54 (c) "Commercial energy system" means a system that is:

55 (i) (A) an active solar system;

56 (B) a biomass system;

57 (C) a direct use geothermal system;

- 58 (D) a geothermal electricity system;
- 59 (E) a geothermal heat pump system;
- 60 (F) a hydroenergy system;
- 61 (G) a hydrogen electrolysis system;
- 62 [~~(G)~~] (H) a passive solar system; or
- 63 [~~(H)~~] (I) a wind system;
- 64 (ii) located in the state; and
- 65 (iii) used:
 - 66 (A) to supply energy to a commercial unit; or
 - 67 (B) as a commercial enterprise.
- 68 (d) "Commercial enterprise" means an entity, the purpose of which is to produce
- 69 electrical, mechanical, or thermal energy for sale from a commercial energy system.
- 70 (e) (i) "Commercial unit" means a building or structure that an entity uses to transact
- 71 business.
- 72 (ii) Notwithstanding Subsection (1)(e)(i):
 - 73 (A) with respect to an active solar system used for agricultural water pumping or a
 - 74 wind system, each individual energy generating device is considered to be a commercial unit;
 - 75 or
 - 76 (B) if an energy system is the building or structure that an entity uses to transact
 - 77 business, a commercial unit is the complete energy system itself.
- 78 (f) "Direct use geothermal system" means a system of apparatus and equipment that
- 79 enables the direct use of geothermal energy to meet energy needs, including heating a building,
- 80 an industrial process, and aquaculture.
- 81 (g) "Geothermal electricity" means energy that is:
 - 82 (i) contained in heat that continuously flows outward from the earth; and
 - 83 (ii) used as a sole source of energy to produce electricity.
- 84 (h) "Geothermal energy" means energy generated by heat that is contained in the earth.
- 85 (i) "Geothermal heat pump system" means a system of apparatus and equipment that:

86 (i) enables the use of thermal properties contained in the earth at temperatures well
87 below 100 degrees Fahrenheit; and

88 (ii) helps meet heating and cooling needs of a structure.

89 (j) "Hydroenergy system" means a system of apparatus and equipment that is capable
90 of:

91 (i) intercepting and converting kinetic water energy into electrical or mechanical
92 energy; and

93 (ii) transferring this form of energy by separate apparatus to the point of use or storage.

94 (k) "Hydrogen electrolysis system" means a system of apparatus and equipment that:

95 (i) is separate or in conjunction with a renewable energy source; and

96 (ii) uses electricity from a renewable energy source to create hydrogen gas from water.

97 ~~(k)~~ (l) "Office" means the Office of Energy Development created in Section
98 [63M-4-401](#).

99 ~~(t)~~ (m) (i) "Passive solar system" means a direct thermal system that utilizes the
100 structure of a building and its operable components to provide for collection, storage, and
101 distribution of heating or cooling during the appropriate times of the year by utilizing the
102 climate resources available at the site.

103 (ii) "Passive solar system" includes those portions and components of a building that
104 are expressly designed and required for the collection, storage, and distribution of solar energy.

105 ~~(m)~~ (n) "Photovoltaic system" means an active solar system that generates electricity
106 from sunlight.

107 ~~(m)~~ (o) (i) "Principal recovery portion" means the portion of a lease payment that
108 constitutes the cost a person incurs in acquiring a commercial energy system.

109 (ii) "Principal recovery portion" does not include:

110 (A) an interest charge; or

111 (B) a maintenance expense.

112 (p) "Renewable energy source" means the same as that term is defined in Section
113 [54-17-601](#).

114 ~~[(q)]~~ (q) "Residential energy system" means the following used to supply energy to or
115 for a residential unit:

- 116 (i) an active solar system;
- 117 (ii) a biomass system;
- 118 (iii) a direct use geothermal system;
- 119 (iv) a geothermal heat pump system;
- 120 (v) a hydroenergy system;
- 121 (vi) a passive solar system; or
- 122 (vii) a wind system.

123 ~~[(p)]~~ (r) (i) "Residential unit" means a house, condominium, apartment, or similar
124 dwelling unit that:

- 125 (A) is located in the state; and
- 126 (B) serves as a dwelling for a person, group of persons, or a family.
- 127 (ii) "Residential unit" does not include property subject to a fee under:
 - 128 (A) Section 59-2-405;
 - 129 (B) Section 59-2-405.1;
 - 130 (C) Section 59-2-405.2;
 - 131 (D) Section 59-2-405.3; or
 - 132 (E) Section 72-10-110.5.

133 ~~[(q)]~~ (s) "Wind system" means a system of apparatus and equipment that is capable of:
134 (i) intercepting and converting wind energy into mechanical or electrical energy; and
135 (ii) transferring these forms of energy by a separate apparatus to the point of use, sale,
136 or storage.

137 (2) A taxpayer may claim an energy system tax credit as provided in this section
138 against a tax due under this chapter for a taxable year.

139 (3) (a) Subject to the other provisions of this Subsection (3), a taxpayer may claim a
140 nonrefundable tax credit under this Subsection (3) with respect to a residential unit the taxpayer
141 owns or uses if:

- 142 (i) the taxpayer:
- 143 (A) purchases and completes a residential energy system to supply all or part of the
- 144 energy required for the residential unit; or
- 145 (B) participates in the financing of a residential energy system to supply all or part of
- 146 the energy required for the residential unit;
- 147 (ii) the residential energy system is completed and placed in service on or after January
- 148 1, 2007; and
- 149 (iii) the taxpayer obtains a written certification from the office in accordance with
- 150 Subsection [~~(7)~~] (8).
- 151 (b) (i) Subject to Subsections (3)(b)(ii) through (iv) and, as applicable, Subsection
- 152 (3)(c) or (d), the tax credit is equal to 25% of the reasonable costs of each residential energy
- 153 system installed with respect to each residential unit the taxpayer owns or uses.
- 154 (ii) A tax credit under this Subsection (3) may include installation costs.
- 155 (iii) A taxpayer may claim a tax credit under this Subsection (3) for the taxable year in
- 156 which the residential energy system is completed and placed in service.
- 157 (iv) If the amount of a tax credit under this Subsection (3) exceeds a taxpayer's tax
- 158 liability under this chapter for a taxable year, the taxpayer may carry forward the amount of the
- 159 tax credit exceeding the liability [~~may be carried forward~~] for a period that does not exceed the
- 160 next four taxable years.
- 161 (c) The total amount of tax credit a taxpayer may claim under this Subsection (3) for a
- 162 residential energy system, other than a photovoltaic system, may not exceed \$2,000 per
- 163 residential unit.
- 164 (d) The total amount of tax credit a taxpayer may claim under this Subsection (3) for a
- 165 photovoltaic system may not exceed:
- 166 (i) for a system installed on or after January 1, 2018, but on or before December 31,
- 167 2020, \$1,600;
- 168 (ii) for a system installed on or after January 1, 2021, but on or before December 31,
- 169 2021, \$1,200;

170 (iii) for a system installed on or after January 1, 2022, but on or before December 31,
171 2022, \$800;

172 (iv) for a system installed on or after January 1, 2023, but on or before December 31,
173 2023, \$400; and

174 (v) for a system installed on or after January 1, 2024, \$0.

175 (e) If a taxpayer sells a residential unit to another person before the taxpayer claims the
176 tax credit under this Subsection (3):

177 (i) the taxpayer may assign the tax credit to the other person; and

178 (ii) (A) if the other person files a return under this chapter, the other person may claim
179 the tax credit under this section as if the other person had met the requirements of this section
180 to claim the tax credit; or

181 (B) if the other person files a return under Chapter 10, Individual Income Tax Act, the
182 other person may claim the tax credit under Section 59-10-1014 as if the other person had met
183 the requirements of Section 59-10-1014 to claim the tax credit.

184 (4) (a) Subject to the other provisions of this Subsection (4), a taxpayer may claim a
185 refundable tax credit under this Subsection (4) with respect to a commercial energy system if:

186 (i) the commercial energy system does not use:

187 (A) wind, geothermal electricity, solar, or biomass equipment capable of producing a
188 total of 660 or more kilowatts of electricity; or

189 (B) solar equipment capable of producing 2,000 or more kilowatts of electricity;

190 (ii) the taxpayer purchases or participates in the financing of the commercial energy
191 system;

192 (iii) (A) the commercial energy system supplies all or part of the energy required by
193 commercial units owned or used by the taxpayer; or

194 (B) the taxpayer sells all or part of the energy produced by the commercial energy
195 system as a commercial enterprise;

196 (iv) the commercial energy system is completed and placed in service on or after
197 January 1, 2007; and

198 (v) the taxpayer obtains a written certification from the office in accordance with
199 Subsection ~~[(7)]~~ (8).

200 (b) (i) Subject to Subsections (4)(b)(ii) through ~~[(v)]~~ (iv), the tax credit is equal to 10%
201 of the reasonable costs of the commercial energy system.

202 (ii) A tax credit under this Subsection (4) may include installation costs.

203 (iii) A taxpayer may claim a tax credit under this Subsection (4) for the taxable year in
204 which the commercial energy system is completed and placed in service.

205 ~~[(iv) A tax credit under this Subsection (4) may not be carried forward or carried back.]~~

206 ~~[(v)]~~ (iv) The total amount of tax credit a taxpayer may claim under this Subsection (4)
207 may not exceed \$50,000 per commercial unit.

208 (c) (i) Subject to Subsections (4)(c)(ii) and (iii), a taxpayer that is a lessee of a
209 commercial energy system installed on a commercial unit may claim a tax credit under this
210 Subsection (4) if the taxpayer ~~[confirms that the lessor irrevocably elects not to claim the tax~~
211 ~~credit]~~ obtains a written certification from the office in accordance with Subsection (8).

212 (ii) A taxpayer described in Subsection (4)(c)(i) may claim as a tax credit under this
213 Subsection (4) only the principal recovery portion of the lease payments.

214 (iii) A taxpayer described in Subsection (4)(c)(i) may claim a tax credit under this
215 Subsection (4) for a period that does not exceed seven taxable years after the ~~[date]~~ day on
216 which the lease begins, as stated in the lease agreement.

217 (5) (a) Subject to the other provisions of this Subsection (5), a taxpayer may claim a
218 refundable tax credit under this Subsection (5) with respect to a commercial energy system if:

219 (i) the commercial energy system uses wind, geothermal electricity, or biomass
220 equipment capable of producing a total of 660 or more kilowatts of electricity;

221 (ii) (A) the commercial energy system supplies all or part of the energy required by
222 commercial units owned or used by the taxpayer; or

223 (B) the taxpayer sells all or part of the energy produced by the commercial energy
224 system as a commercial enterprise;

225 (iii) the commercial energy system is completed and placed in service on or after

226 January 1, 2007; and

227 (iv) the taxpayer obtains a written certification from the office in accordance with
228 Subsection [~~(7)~~] (8).

229 (b) (i) Subject to [~~Subsections~~] Subsection (5)(b)(ii) [~~and (iii)~~], a tax credit under this
230 Subsection (5) is equal to the product of:

231 (A) 0.35 cents; and

232 (B) the kilowatt hours of electricity produced and used or sold during the taxable year.

233 (ii) A tax credit under this Subsection (5) may be claimed for production occurring
234 during a period of 48 months beginning with the month in which the commercial energy
235 system is placed in commercial service.

236 [~~(iii) A tax credit under this Subsection (5) may not be carried forward or carried back.~~]

237 (c) A taxpayer that is a lessee of a commercial energy system installed on a commercial
238 unit may claim a tax credit under this Subsection (5) if the taxpayer [~~confirms that the lessor~~
239 ~~irrevocably elects not to claim the tax credit~~] obtains a written certification from the office in
240 accordance with Subsection (8).

241 (6) (a) Subject to the other provisions of this Subsection (6), a taxpayer may claim a
242 refundable tax credit as provided in this Subsection (6) if:

243 (i) the taxpayer owns a commercial energy system that uses solar equipment capable of
244 producing a total of 660 or more kilowatts of electricity;

245 (ii) (A) the commercial energy system supplies all or part of the energy required by
246 commercial units owned or used by the taxpayer; or

247 (B) the taxpayer sells all or part of the energy produced by the commercial energy
248 system as a commercial enterprise;

249 (iii) the taxpayer does not claim a tax credit under Subsection (4);

250 (iv) the commercial energy system is completed and placed in service on or after

251 January 1, 2015; and

252 (v) the taxpayer obtains a written certification from the office in accordance with
253 Subsection [~~(7)~~] (8).

254 (b) (i) Subject to ~~[Subsections]~~ Subsection (6)(b)(ii) ~~[and (iii)]~~, a tax credit under this
255 Subsection (6) is equal to the product of:

256 (A) 0.35 cents; and

257 (B) the kilowatt hours of electricity produced and used or sold during the taxable year.

258 (ii) A tax credit under this Subsection (6) may be claimed for production occurring
259 during a period of 48 months beginning with the month in which the commercial energy
260 system is placed in commercial service.

261 ~~[(iii) A tax credit under this Subsection (6) may not be carried forward or carried back.]~~

262 (c) A taxpayer that is a lessee of a commercial energy system installed on a commercial
263 unit may claim a tax credit under this Subsection (6) if the taxpayer ~~[confirms that the lessor~~
264 ~~irrevocably elects not to claim the tax credit]~~ obtains a written certification from the office in
265 accordance with Subsection (8).

266 (7) (a) A taxpayer may claim a nonrefundable tax credit as provided in this Subsection
267 (7) if:

268 (i) the taxpayer owns a commercial energy system that uses a hydrogen electrolysis
269 system having a rated capacity of two megawatts or greater;

270 (ii) (A) the commercial energy system supplies all or part of the energy required by
271 commercial units owned or used by the taxpayer; or

272 (B) the taxpayer sells all or part of the energy produced by the commercial energy
273 system as a commercial enterprise;

274 (iii) the taxpayer does not claim a credit under Subsection (4);

275 (iv) the commercial energy system is completed and placed in service on or after
276 January 1, 2015; and

277 (v) the taxpayer obtains a written certification from the office in accordance with
278 Subsection (8).

279 (b) (i) Subject to Subsection (7)(b)(ii), a tax credit under this Subsection (7) is equal to
280 the product of:

281 (A) 12 cents; and

282 (B) the kilograms of hydrogen produced and stored, used, or sold during the taxable
283 year.

284 (ii) A taxpayer may claim a tax credit for production occurring during a period of 48
285 months beginning with the month in which the commercial energy system is placed in
286 commercial service.

287 (c) If the amount of a tax credit under this Subsection (7) exceeds a taxpayer's tax
288 liability under this chapter for a taxable year, the taxpayer may carry forward the amount of the
289 tax credit exceeding the liability for a period that does not exceed the next four taxable years.

290 (d) (i) Subject to Subsections (7)(d)(ii) and (iii), a taxpayer that is a lessee of a
291 commercial energy system installed on a commercial unit may claim a tax credit under this
292 Subsection (7) if the taxpayer obtains a written certification from the office in accordance with
293 Subsection (8).

294 (ii) A taxpayer described in Subsection (7)(d)(i) may claim as a tax credit under this
295 Subsection (7) only the principal recovery portion of the lease payments.

296 (iii) A taxpayer described in Subsection (7)(d)(i) may claim a tax credit under this
297 Subsection (7) for a period that does not exceed seven taxable years after the day on which the
298 lease begins, as stated in the lease agreement.

299 ~~(7)~~ (8) (a) Before a taxpayer, including a lessee under Subsections (4) through (7),
300 may claim a tax credit under this section, the taxpayer shall obtain a written certification from
301 the office.

302 (b) The office shall issue a taxpayer that is not a lessee a written certification if the
303 office determines that:

304 (i) the taxpayer meets the requirements of this section to receive a tax credit; and

305 (ii) the residential energy system or commercial energy system with respect to which
306 the taxpayer seeks to claim a tax credit:

307 (A) has been completely installed;

308 (B) is a viable system for saving or producing energy from renewable resources; and

309 (C) is safe, reliable, efficient, and technically feasible to ensure that the residential

310 energy system or commercial energy system uses the state's renewable and nonrenewable
311 energy resources in an appropriate and economic manner.

312 (c) The office shall issue a taxpayer that is a lessee under Subsections (4) through (7) a
313 written certification if the office receives:

314 (i) a copy of the lessor's written certification or other proof, in a form established by the
315 office, that the lessor qualified for a tax credit under Subsection (4), (5), (6), or (7); and

316 (ii) proof that the lessor irrevocably elects not to claim the tax credit for which the
317 lessor qualified.

318 ~~(c)~~ (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
319 Act, the office may make rules:

320 (i) for determining whether a residential energy system or commercial energy system
321 meets the requirements of Subsection ~~(7)~~ (8)(b)(ii); and

322 (ii) for purposes of a tax credit under Subsection (3) or (4), establishing the reasonable
323 costs of a residential energy system or a commercial energy system, as an amount per unit of
324 energy production.

325 ~~(d)~~ (e) A taxpayer, including a lessee under Subsections (4) through (7), that obtains a
326 written certification from the office shall retain the written certification for the same time
327 period a person is required to keep books and records under Section [59-1-1406](#).

328 ~~(e)~~ (f) The office shall submit to the commission an electronic list that includes:

329 (i) the name and identifying information of each taxpayer or lessee to which the office
330 issues a written certification; and

331 (ii) for each taxpayer and lessee:

332 (A) the amount of the tax credit listed on the written certification; and

333 (B) the date the renewable energy system was installed.

334 ~~(f)~~ (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
335 Act, the commission may make rules to address the certification of a tax credit under this
336 section.

337 ~~(g)~~ (10) A tax credit under this section is in addition to any tax credits provided under

338 the laws or rules and regulations of the United States.

339 Section 2. Section **59-8-301** is enacted to read:

340 **Part 3. Nonrefundable Tax Credits.**

341 **59-8-301. Nonrefundable renewable energy system tax credit.**

342 (1) As used in this section:

343 (a) "Commercial energy system" means the same as that term is defined in Section
344 59-7-614.

345 (b) "Commercial enterprise" means the same as that term is defined in Section
346 59-7-614.

347 (c) "Commercial unit" means the same as that term is defined in Section 59-7-614.

348 (d) "Hydrogen electrolysis system" means the same as that term is defined in Section
349 59-7-614.

350 (e) "Office" means the Office of Energy Development created in Section 63M-4-401.

351 (2) (a) A taxpayer may claim a nonrefundable tax credit against a tax due under this
352 chapter if:

353 (i) the taxpayer owns a commercial energy system that uses a hydrogen electrolysis
354 system having a rated capacity of two megawatts or higher;

355 (ii) (A) the commercial energy system supplies all or part of the energy required by
356 commercial units owned or used by the taxpayer; or

357 (B) the taxpayer sells all or part of the energy produced by the commercial energy
358 system as a commercial enterprise;

359 (iii) the commercial energy system is completed and placed in service on or after
360 January 1, 2015; and

361 (iv) the taxpayer obtains a written certification from the office in accordance with
362 Subsection (3).

363 (b) (i) Subject to Subsection (2)(b)(ii), a tax credit under this Subsection (2) is equal to
364 the product of:

365 (A) 12 cents; and

366 (B) the kilograms of hydrogen produced and stored, used, or sold during the taxable
367 year.

368 (ii) A taxpayer may claim a tax credit for production occurring during a period of 48
369 months beginning with the month in which the commercial energy system is placed in
370 commercial service.

371 (c) If the amount of a tax credit under this section exceeds a taxpayer's tax liability
372 under this chapter for a taxable year, the taxpayer may carry forward the amount of the tax
373 credit exceeding the liability for a period that does not exceed the next four taxable years.

374 (d) (i) Subject to Subsections (2)(d)(ii) and (iii), a taxpayer that is a lessee of a
375 commercial energy system installed on a commercial unit may claim a tax credit under this
376 section if the taxpayer obtains a written certification from the office in accordance with
377 Subsection (3).

378 (ii) A taxpayer described in Subsection (2)(d)(i) may claim as a tax credit under this
379 Subsection (2) only the principal recovery portion of the lease payments.

380 (iii) A taxpayer described in Subsection (2)(d)(i) may claim a tax credit under this
381 Subsection (2) for a period that does not exceed seven taxable years after the day on which the
382 lease begins, as stated in the lease agreement.

383 (3) (a) Before a taxpayer, including a lessee, may claim a tax credit under this section,
384 the taxpayer shall obtain a written certification from the office.

385 (b) The office shall issue a taxpayer that is not a lessee a written certification if the
386 office determines that:

387 (i) the taxpayer meets the requirements of this section to receive a tax credit; and

388 (ii) the commercial energy system with respect to which the taxpayer seeks to claim a
389 tax credit:

390 (A) has been completely installed;

391 (B) is a viable system for saving or producing energy from renewable resources; and

392 (C) is safe, reliable, efficient, and technically feasible to ensure that the commercial

393 energy system uses the state's renewable and nonrenewable energy resources in an appropriate

394 and economic manner.

395 (c) The office shall issue a taxpayer that is a lessee a written certification if the office
396 receives:

397 (i) a copy of the lessor's written certification or other proof, in a form established by the
398 office, that the lessor qualified for a tax credit under this section; and

399 (ii) proof that the lessor irrevocably elects not to claim the tax credit for which the
400 lessor qualified.

401 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
402 office may make rules for determining whether a commercial energy system meets the
403 requirements of Subsection (3)(b)(ii).

404 (e) A taxpayer, including a lessee, that obtains a written certification from the office
405 shall retain the written certification for the same time period a person is required to keep books
406 and records under Section [59-1-1406](#).

407 (4) The office shall submit to the commission an electronic list that includes:

408 (a) the name and identifying information of each taxpayer or lessee to which the office
409 issues a written certification; and

410 (b) for each taxpayer and lessee:

411 (i) the amount of the tax credit listed on the written certification; and

412 (ii) the date the renewable energy system was installed.

413 Section 3. Section **59-10-1014** is amended to read:

414 **59-10-1014. Nonrefundable renewable energy systems tax credits -- Definitions --**
415 **Certification -- Rulemaking authority.**

416 (1) As used in this section:

417 (a) (i) "Active solar system" means a system of equipment that is capable of:

418 (A) collecting and converting incident solar radiation into thermal, mechanical, or
419 electrical energy; and

420 (B) transferring a form of energy described in Subsection (1)(a)(i)(A) by a separate
421 apparatus to storage or to the point of use.

422 (ii) "Active solar system" includes water heating, space heating or cooling, and
423 electrical or mechanical energy generation.

424 (b) "Biomass system" means a system of apparatus and equipment for use in:

425 (i) converting material into biomass energy, as defined in Section [59-12-102](#); and

426 (ii) transporting the biomass energy by separate apparatus to the point of use or storage.

427 (c) "Commercial energy system" means the same as that term is defined in Section
428 [59-7-614](#).

429 (d) "Commercial enterprise" means the same as that term is defined in Section
430 [59-7-614](#).

431 (e) "Commercial unit" means the same as that term is defined in Section [59-7-614](#).

432 [~~(f)~~] (f) "Direct use geothermal system" means a system of apparatus and equipment
433 that enables the direct use of geothermal energy to meet energy needs, including heating a
434 building, an industrial process, and aquaculture.

435 [~~(g)~~] (g) "Geothermal electricity" means energy that is:

436 (i) contained in heat that continuously flows outward from the earth; and

437 (ii) used as a sole source of energy to produce electricity.

438 [~~(h)~~] (h) "Geothermal energy" means energy generated by heat that is contained in the
439 earth.

440 [~~(i)~~] (i) "Geothermal heat pump system" means a system of apparatus and equipment
441 that:

442 (i) enables the use of thermal properties contained in the earth at temperatures well
443 below 100 degrees Fahrenheit; and

444 (ii) helps meet heating and cooling needs of a structure.

445 [~~(j)~~] (j) "Hydroenergy system" means a system of apparatus and equipment that is
446 capable of:

447 (i) intercepting and converting kinetic water energy into electrical or mechanical
448 energy; and

449 (ii) transferring this form of energy by separate apparatus to the point of use or storage.

450 (k) "Hydrogen electrolysis system" means the same as that term is defined in Section
451 59-7-614.

452 [~~(h)~~] (l) "Office" means the Office of Energy Development created in Section
453 63M-4-401.

454 [~~(i)~~] (m) (i) "Passive solar system" means a direct thermal system that utilizes the
455 structure of a building and its operable components to provide for collection, storage, and
456 distribution of heating or cooling during the appropriate times of the year by utilizing the
457 climate resources available at the site.

458 (ii) "Passive solar system" includes those portions and components of a building that
459 are expressly designed and required for the collection, storage, and distribution of solar energy.

460 [~~(j)~~] (n) "Photovoltaic system" means an active solar system that generates electricity
461 from sunlight.

462 [~~(k)~~] (o) (i) "Principal recovery portion" means the portion of a lease payment that
463 constitutes the cost a person incurs in acquiring a residential energy system.

464 (ii) "Principal recovery portion" does not include:

465 (A) an interest charge; or

466 (B) a maintenance expense.

467 [~~(l)~~] (p) "Residential energy system" means the following used to supply energy to or
468 for a residential unit:

469 (i) an active solar system;

470 (ii) a biomass system;

471 (iii) a direct use geothermal system;

472 (iv) a geothermal heat pump system;

473 (v) a hydroenergy system;

474 (vi) a passive solar system; or

475 (vii) a wind system.

476 [~~(m)~~] (q) (i) "Residential unit" means a house, condominium, apartment, or similar
477 dwelling unit that:

- 478 (A) is located in the state; and
- 479 (B) serves as a dwelling for a person, group of persons, or a family.
- 480 (ii) "Residential unit" does not include property subject to a fee under:
- 481 (A) Section 59-2-405;
- 482 (B) Section 59-2-405.1;
- 483 (C) Section 59-2-405.2;
- 484 (D) Section 59-2-405.3; or
- 485 (E) Section 72-10-110.5.
- 486 ~~[(m)]~~ (r) "Wind system" means a system of apparatus and equipment that is capable of:
- 487 (i) intercepting and converting wind energy into mechanical or electrical energy; and
- 488 (ii) transferring these forms of energy by a separate apparatus to the point of use or
- 489 storage.
- 490 (2) A claimant, estate, or trust may claim an energy system tax credit as provided in
- 491 this section against a tax due under this chapter for a taxable year.
- 492 (3) (a) ~~[For a taxable year beginning on or after January 1, 2007, a]~~ A claimant, estate,
- 493 or trust may claim a nonrefundable tax credit under this ~~[section]~~ Subsection (3) with respect to
- 494 a residential unit the claimant, estate, or trust owns or uses if:
- 495 ~~[(a)]~~ (i) the claimant, estate, or trust:
- 496 ~~[(i)]~~ (A) purchases and completes a residential energy system to supply all or part of
- 497 the energy required for the residential unit; or
- 498 ~~[(ii)]~~ (B) participates in the financing of a residential energy system to supply all or
- 499 part of the energy required for the residential unit;
- 500 ~~[(b)]~~ (ii) the residential energy system is installed on or after January 1, 2007; and
- 501 ~~[(c)]~~ (iii) the claimant, estate, or trust obtains a written certification from the office in
- 502 accordance with Subsection (5).
- 503 ~~[(4)(a)]~~ (b) For a residential energy system, other than a photovoltaic system, the tax
- 504 credit described in this section is equal to the lesser of:
- 505 (i) 25% of the reasonable costs, including installation costs, of each residential energy

506 system installed with respect to each residential unit the claimant, estate, or trust owns or uses;
507 and

508 (ii) \$2,000.

509 ~~[(b) Subject to Subsection (5)(d), for]~~ (c) For a residential energy system that is a
510 photovoltaic system, the tax credit described in this section is equal to the lesser of:

511 (i) 25% of the reasonable costs, including installation costs, of each system installed
512 with respect to each residential unit the claimant, estate, or trust owns or uses; or

513 (ii) (A) for a system installed on or after January 1, 2007, but on or before December
514 31, 2017, \$2,000;

515 (B) for a system installed on or after January 1, 2018, but on or before December 31,
516 2020, \$1,600;

517 (C) for a system installed on or after January 1, 2021, but on or before December 31,
518 2021, \$1,200;

519 (D) for a system installed on or after January 1, 2022, but on or before December 31,
520 2022, \$800;

521 (E) for a system installed on or after January 1, 2023, but on or before December 31,
522 2023, \$400; and

523 (F) for a system installed on or after January 1, 2024, \$0.

524 ~~[(e)]~~ (d) (i) The office shall determine the amount of the tax credit that a claimant,
525 estate, or trust may claim and list that amount on the written certification that the office issues
526 under Subsection (5).

527 (ii) The claimant, estate, or trust may claim the tax credit in the amount listed on the
528 written certification that the office issues under Subsection (5).

529 ~~[(d)]~~ (e) A claimant, estate, or trust may claim a tax credit under this Subsection (3) for
530 the taxable year in which the residential energy system is installed.

531 ~~[(e)]~~ (f) If the amount of a tax credit listed on the written certification exceeds a
532 claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the claimant,
533 estate, or trust may carry forward the amount of the tax credit exceeding the liability for a

534 period that does not exceed the next four taxable years.

535 ~~[(f)]~~ (g) A claimant, estate, or trust may claim a tax credit with respect to additional
536 residential energy systems or parts of residential energy systems for a subsequent taxable year
537 if the total amount of tax credit the claimant, estate, or trust claims does not exceed \$2,000 per
538 residential unit.

539 ~~[(g)]~~ (h) (i) Subject to Subsections (4)~~[(g)]~~(h)(ii) and (iii), a claimant, estate, or trust
540 that leases a residential energy system installed on a residential unit may claim a tax credit
541 under this Subsection (3) if the claimant, estate, or trust ~~[confirms that the lessor irrevocably~~
542 ~~elects not to claim the tax credit]~~ obtains a written certification from the office in accordance
543 with Subsection (5).

544 (ii) A claimant, estate, or trust described in Subsection (4)~~[(g)]~~(h)(i) ~~[that leases a~~
545 ~~residential energy system]~~ may claim as a tax credit under this Subsection (3) only the principal
546 recovery portion of the lease payments.

547 (iii) A claimant, estate, or trust described in Subsection (4)~~[(g)]~~(h)(i) ~~[that leases a~~
548 ~~residential energy system]~~ may claim a tax credit under this Subsection (3) for a period that
549 does not exceed seven taxable years after the ~~[date]~~ day on which the lease begins, as stated in
550 the lease agreement.

551 ~~[(h)]~~ (i) If a claimant, estate, or trust sells a residential unit to another person before the
552 claimant, estate, or trust claims the tax credit under this Subsection (3):

553 (i) the claimant, estate, or trust may assign the tax credit to the other person; and

554 (ii) (A) if the other person files a return under Chapter 7, Corporate Franchise and
555 Income Taxes, the other person may claim the tax credit as if the other person had met the
556 requirements of Section 59-7-614 to claim the tax credit; or

557 (B) if the other person files a return under this chapter, the other person may claim the
558 tax credit under this section as if the other person had met the requirements of this section to
559 claim the tax credit.

560 (4) (a) A claimant, estate, or trust may claim a nonrefundable tax credit as provided in
561 this Subsection (4) if:

562 (i) the claimant, estate, or trust owns a commercial energy system that uses a hydrogen
563 electrolysis system having a rated capacity of two megawatts or greater;

564 (ii) (A) the commercial energy system supplies all or part of the energy required by
565 commercial units owned or used by the claimant, estate, or trust; or

566 (B) the claimant, estate, or trust sells all or part of the energy produced by the
567 commercial energy system as a commercial enterprise;

568 (iii) the claimant, estate, or trust does not claim a credit under Subsection
569 59-10-1106(3);

570 (iv) the commercial energy system is completed and placed in service on or after
571 January 1, 2015; and

572 (v) the claimant, estate, or trust obtains a written certification from the office in
573 accordance with Subsection (5).

574 (b) (i) Subject to Subsection (4)(b)(ii), a tax credit under this Subsection (4) is equal to
575 the product of:

576 (A) 12 cents; and

577 (B) the kilograms of hydrogen produced and stored, used, or sold during the taxable
578 year.

579 (ii) A claimant, estate, or trust may claim a tax credit for production occurring during a
580 period of 48 months beginning with the month in which the commercial energy system is
581 placed in commercial service.

582 (c) If the amount of a tax credit under this Subsection (4) exceeds a claimant's, estate's,
583 or trust's tax liability under this chapter for a taxable year, the claimant, estate, or trust may
584 carry forward the amount of the tax credit exceeding the liability for a period that does not
585 exceed the next four taxable years.

586 (d) (i) Subject to Subsections (4)(d)(ii) and (iii), a claimant, estate, or trust that is a
587 lessee of a commercial energy system installed on a commercial unit may claim a tax credit
588 under this Subsection (4) if the claimant, estate, or trust obtains a written certification from the
589 office in accordance with Subsection (5).

590 (ii) A claimant, estate, or trust described in Subsection (4)(d)(i) may claim as a tax
591 credit under this Subsection (4) only the principal recovery portion of the lease payments.

592 (iii) A claimant, estate, or trust described in Subsection (4)(d)(i) may claim a tax credit
593 under this Subsection (4) for a period that does not exceed seven taxable years after the day on
594 which the lease begins, as stated in the lease agreement.

595 (5) (a) Before a claimant, estate, or trust, including a lessee or assignee, may claim a
596 tax credit under this section, the claimant, estate, or trust shall obtain a written certification
597 from the office.

598 (b) The office shall issue a claimant, estate, or trust a written certification that is not a
599 lessee or an assignee if the office determines that:

600 (i) the claimant, estate, or trust meets the requirements of this section to receive a tax
601 credit; and

602 (ii) the office determines that the residential energy system with respect to which the
603 claimant, estate, or trust seeks to claim a tax credit:

604 (A) has been completely installed;

605 (B) is a viable system for saving or producing energy from renewable resources; and

606 (C) is safe, reliable, efficient, and technically feasible to ensure that the residential
607 energy system uses the state's renewable and nonrenewable energy resources in an appropriate
608 and economic manner.

609 (c) The office shall issue a claimant, estate, or trust that is a lessee or an assignee a
610 written certification if the office receives:

611 (i) a copy of the lessor's or assignor's written certification or other proof, in a form
612 established by the office, that the lessor or assignor qualified for a tax credit under this section;
613 and

614 (ii) proof that the lessor or assignor irrevocably elects not to claim the tax credit for
615 which the lessor or assignor qualified.

616 ~~(c)~~ (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
617 Act, the office may make rules:

618 (i) for determining whether a residential energy system meets the requirements of
619 Subsection (5)(b)(ii); and

620 (ii) for purposes of determining the amount of a tax credit that a claimant, estate, or
621 trust may receive under Subsection (4), establishing the reasonable costs of a residential energy
622 system, as an amount per unit of energy production.

623 ~~[(d)]~~ (e) A claimant, estate, or trust, including a lessee or assignee, that obtains a
624 written certification from the office shall retain the written certification for the same time
625 period a person is required to keep books and records under Section [59-1-1406](#).

626 ~~[(e)]~~ (f) The office shall submit to the commission an electronic list that includes:

627 (i) the name and identifying information of each claimant, estate, ~~[or]~~ trust, lessee, or
628 assignee to which the office issues a written certification; and

629 (ii) for each claimant, estate, ~~[or]~~ trust, lessee, or assignee:

630 (A) the amount of the tax credit listed on the written certification; and

631 (B) the date the renewable energy system was installed.

632 (6) A tax credit under this section is in addition to any tax credits provided under the
633 laws or rules and regulations of the United States.

634 (7) A purchaser of one or more solar units that claims a tax credit under Section
635 [59-10-1024](#) for the purchase of the one or more solar units may not claim a tax credit under this
636 section for that purchase.

637 Section 4. Section **63M-4-602** is amended to read:

638 **63M-4-602. Definitions.**

639 As used in this part:

640 (1) "Applicant" means a person that conducts business in the state and that applies for a
641 tax credit under this part.

642 (2) "Fuel standard compliance project" means a project designed to retrofit a fuel
643 refinery in order to make the refinery capable of producing fuel that complies with the United
644 States Environmental Protection Agency's Tier 3 gasoline sulfur standard described in 40
645 C.F.R. Sec. 79.54.

- 646 (3) "High cost infrastructure project" means a project:
- 647 (a) (i) that expands or creates new industrial, mining, manufacturing, or agriculture
- 648 activity in the state, not including a retail business;
- 649 (ii) that involves new investment of at least \$50,000,000 in an existing industrial,
- 650 mining, manufacturing, or agriculture entity, by the entity; or
- 651 (iii) for the construction of a plant or other facility, including a fueling station, for the
- 652 storage, production, or distribution of hydrogen fuel used for transportation, electricity
- 653 generation, or industrial use;
- 654 (b) that requires or is directly facilitated by infrastructure construction; and
- 655 (c) for which the cost of infrastructure construction to the entity creating the project is
- 656 greater than:
- 657 (i) 10% of the total cost of the project; or
- 658 (ii) \$10,000,000.
- 659 (4) "Infrastructure" means:
- 660 (a) an energy delivery project as defined in Section [63H-2-102](#);
- 661 (b) a railroad as defined in Section [54-2-1](#);
- 662 (c) a fuel standard compliance project;
- 663 (d) a road improvement project;
- 664 (e) a water self-supply project;
- 665 (f) a water removal system project;
- 666 (g) a solution-mined subsurface salt cavern; ~~[or]~~
- 667 (h) a project that is designed to:
- 668 (i) increase the capacity for water delivery to a water user in the state; or
- 669 (ii) increase the capability of an existing water delivery system or related facility to
- 670 deliver water to a water user in the state~~[-];~~ or
- 671 (i) a hydrogen fuel production or distribution project.
- 672 (5) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an
- 673 agreement with the office that qualifies the applicant to receive a tax credit as provided in this

674 part.

675 (b) "Infrastructure cost-burdened entity" includes a pass-through entity taxpayer, as
676 defined in Section 59-10-1402, of a person described in Subsection (5)(a).

677 (c) "Infrastructure-related revenue" means an amount of tax revenue, for an entity
678 creating a high cost infrastructure project, in a taxable year, that is directly attributable to a high
679 cost infrastructure project, under:

680 (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

681 (b) Title 59, Chapter 10, Individual Income Tax Act; and

682 (c) Title 59, Chapter 12, Sales and Use Tax Act.

683 (7) "Office" means the Office of Energy Development created in Section 63M-4-401.

684 (8) "Tax credit" means a tax credit under Section 59-7-619 or 59-10-1034.

685 (9) "Tax credit certificate" means a certificate issued by the office to an infrastructure
686 cost-burdened entity that:

687 (a) lists the name of the infrastructure cost-burdened entity;

688 (b) lists the infrastructure cost-burdened entity's taxpayer identification number;

689 (c) lists, for a taxable year, the amount of the tax credit authorized for the infrastructure
690 cost-burdened entity under this part; and

691 (d) includes other information as determined by the office.

692 Section 5. **Retrospective operation.**

693 The changes to Sections 59-7-614, 59-10-1014, and 63M-4-602 have retrospective
694 operation for a taxable year beginning on or after January 1, 2020.

695 Section 6. **Effective date.**

696 (1) Except as provided in Subsection (2), this bill takes effect on May 12, 2020.

697 (2) The changes to Section 59-8-301 take effect for a taxable year beginning on or after
698 July 1, 2020.