

Senator Howard A. Stephenson proposes the following substitute bill:

TAX INCENTIVES FOR ALTERNATE POWER

GENERATION

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: Michael E. Noel

LONG TITLE

General Description:

This bill amends and extends the renewable energy tax credit and provides a sales tax refund for certain renewable energy systems.

Highlighted Provisions:

This bill:

- ▶ defines terms;
 - ▶ extends the availability of the renewable energy tax credit for some energy systems;
 - ▶ eliminates some tax credits for residential energy systems;
 - ▶ provides for the Tax Review Commission to review the renewable energy tax credit;
 - ▶ expands the renewable energy tax credit to include some geothermal sources;
 - ▶ makes the renewable energy tax credit on some commercial energy systems a refundable credit;
 - ▶ changes the calculation of the tax credit for commercial energy systems;
 - ▶ removes language reimbursing the Uniform School Fund for renewable energy tax credits taken;
 - ▶ provides a sales and use tax payment for installation of a residential energy system;
- and



26 ▶ makes technical changes.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill provides retrospective operation.

31 **Utah Code Sections Affected:**

32 ENACTS:

33 **59-10-1106**, Utah Code Annotated 1953

34 **59-12-104.6**, Utah Code Annotated 1953

35 REPEALS AND REENACTS:

36 **59-7-614**, as last amended by Chapter 223, Laws of Utah 2006

37 REPEALS:

38 **59-10-1014**, as renumbered and amended by Chapter 223, Laws of Utah 2006



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

41 Section 1. Section **59-7-614** is repealed and reenacted to read:

42 **59-7-614. Renewable energy systems tax credit -- Definitions -- Limitations --**

43 **State tax credit in addition to allowable federal credits -- Certification -- Rulemaking**
44 **authority.**

45 (1) As used in this section:

46 (a) "Active solar system":

47 (i) means a system of equipment capable of collecting and converting incident solar
48 radiation into thermal, mechanical, or electrical energy, and transferring these forms of energy
49 by a separate apparatus to storage or to the point of use; and

50 (ii) includes water heating, space heating or cooling, and electrical or mechanical
51 energy generation.

52 (b) "Biomass system" means any system of apparatus and equipment for use in
53 converting material into biomass energy, as defined in Section 59-12-102, and transporting that
54 energy by separate apparatus to the point of use or storage.

55 (c) "Business entity" means any sole proprietorship, estate, trust, partnership,
56 association, corporation, cooperative, or other entity under which business is conducted or

57 transacted.

58 (d) "Commercial energy system" means any active solar, passive solar, geothermal
59 electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or
60 biomass system used to supply energy to a commercial unit or as a commercial enterprise.

61 (e) "Commercial enterprise" means a business entity whose purpose is to produce
62 electrical, mechanical, or thermal energy for sale from a commercial energy system.

63 (f) (i) "Commercial unit" means any building or structure that a business entity uses to
64 transact its business except as provided in Subsection (1)(f)(ii); and

65 (ii) (A) in the case of an active solar system used for agricultural water pumping or a
66 wind system, each individual energy generating device shall be a commercial unit; and

67 (B) if an energy system is the building or structure that a business entity uses to
68 transact its business, a commercial unit is the complete energy system itself.

69 (g) "Direct-use geothermal system" means a system of apparatus and equipment
70 enabling the direct use of thermal energy, generally between 100 and 300 degrees Fahrenheit,
71 that is contained in the earth to meet energy needs, including heating a building, an industrial
72 process, and aquaculture.

73 (h) "Geothermal electricity" means energy contained in heat that continuously flows
74 outward from the earth that is used as a sole source of energy to produce electricity.

75 (i) "Geothermal heat-pump system" means a system of apparatus and equipment
76 enabling the use of thermal properties contained in the earth at temperatures well below 100
77 degrees Fahrenheit to help meet heating and cooling needs of a structure.

78 (j) "Hydroenergy system" means a system of apparatus and equipment capable of
79 intercepting and converting kinetic water energy into electrical or mechanical energy and
80 transferring this form of energy by separate apparatus to the point of use or storage.

81 (k) "Individual taxpayer" means any person who is a taxpayer as defined in Section
82 59-10-103 and an individual as defined in Section 59-10-103.

83 (l) "Passive solar system":

84 (i) means a direct thermal system that utilizes the structure of a building and its
85 operable components to provide for collection, storage, and distribution of heating or cooling
86 during the appropriate times of the year by utilizing the climate resources available at the site;
87 and

88 (ii) includes those portions and components of a building that are expressly designed
89 and required for the collection, storage, and distribution of solar energy.

90 (m) "Residential energy system" means any active solar, passive solar, biomass,
91 direct-use geothermal, geothermal heat-pump system, wind, or hydroenergy system used to
92 supply energy to or for any residential unit.

93 (n) "Residential unit" means any house, condominium, apartment, or similar dwelling
94 unit that serves as a dwelling for a person, group of persons, or a family but does not include
95 property subject to a fee under:

96 (i) Section 59-2-404;

97 (ii) Section 59-2-405;

98 (iii) Section 59-2-405.1;

99 (iv) Section 59-2-405.2; or

100 (v) Section 59-2-405.3.

101 (o) "Utah Geological Survey" means the Utah Geological Survey established in Section
102 63-73-5.

103 (p) "Wind system" means a system of apparatus and equipment capable of intercepting
104 and converting wind energy into mechanical or electrical energy and transferring these forms of
105 energy by a separate apparatus to the point of use, sale, or storage.

106 (2) (a) (i) For taxable years beginning on or after January 1, 2007, a business entity that
107 purchases and completes or participates in the financing of a residential energy system to
108 supply all or part of the energy required for a residential unit owned or used by the business
109 entity and situated in Utah is entitled to a nonrefundable tax credit as provided in this
110 Subsection (2)(a).

111 (ii) (A) A business entity is entitled to a tax credit equal to 25% of the reasonable costs
112 of each residential energy system installed with respect to each residential unit it owns or uses,
113 including installation costs, against any tax due under this chapter for the taxable year in which
114 the energy system is completed and placed in service.

115 (B) The total amount of each credit under this Subsection (2)(a) may not exceed \$2,000
116 per residential unit.

117 (C) The credit under this Subsection (2)(a) is allowed for any residential energy system
118 completed and placed in service on or after January 1, 2007.

119 (iii) If a business entity sells a residential unit to an individual taxpayer before making
 120 a claim for the tax credit under this Subsection (2)(a), the business entity may:

121 (A) assign its right ~~H→ [to this tax credit] ←H~~ to the individual taxpayer; and

122 (B) if the business entity assigns its right ~~H→ [to the tax credit] ←H~~ to an individual
 122a taxpayer

123 under Subsection (2)(a)(iii)(A), the individual taxpayer may claim the ~~H→ [tax credit as if the~~
 124 ~~individual taxpayer had completed or participated in the costs of the residential energy system~~
 125 ~~under Section 59-10-1014] payment allowed by Section 59-12-104.6 ←H~~ .

126 (b) (i) For taxable years beginning on or after January 1, 2007, a business entity that
 127 purchases or participates in the financing of a commercial energy system situated in Utah is
 128 entitled to a refundable tax credit as provided in this Subsection (2)(b) if the commercial
 129 energy system does not use wind, geothermal electricity, or biomass equipment capable of
 130 producing a total of 660 or more kilowatts of electricity and:

131 (A) the commercial energy system supplies all or part of the energy required by
 132 commercial units owned or used by the business entity; or

133 (B) the business entity sells all or part of the energy produced by the commercial
 134 energy system as a commercial enterprise.

135 (ii) (A) A business entity is entitled to a tax credit of up to 10% of the reasonable costs
 136 of any commercial energy system installed, including installation costs, against any tax due
 137 under this chapter for the taxable year in which the commercial energy system is completed and
 138 placed in service.

139 (B) Notwithstanding Subsection (2)(b)(ii)(A), the total amount of the credit under this
 140 Subsection (2)(b) may not exceed \$50,000 per commercial unit.

141 (C) The credit under this Subsection (2)(b) is allowed for any commercial energy
 142 system completed and placed in service on or after January 1, 2007.

143 (iii) A business entity that leases a commercial energy system installed on a
 144 commercial unit is eligible for the tax credit under this Subsection (2)(b) if the lessee can
 145 confirm that the lessor irrevocably elects not to claim the credit.

146 (iv) Only the principal recovery portion of the lease payments, which is the cost
 147 incurred by a business entity in acquiring a commercial energy system, excluding interest
 148 charges and maintenance expenses, is eligible for the tax credit under this Subsection (2)(b).

149 (v) A business entity that leases a commercial energy system is eligible to use the tax

150 credit under this Subsection (2)(b) for a period no greater than seven years from the initiation
151 of the lease.

152 (c) (i) For taxable years beginning on or after January 1, 2007, a business entity that
153 owns a commercial energy system situated in Utah using wind, geothermal electricity, or
154 biomass equipment capable of producing a total of 660 or more kilowatts of electricity is
155 entitled to a refundable tax credit as provided in this Subsection (2)(c) if:

156 (A) the commercial energy system supplies all or part of the energy required by
157 commercial units owned or used by the business entity; or

158 (B) the business entity sells all or part of the energy produced by the commercial
159 energy system as a commercial enterprise.

160 (ii) (A) A business entity is entitled to a tax credit under this section equal to the
161 product of:

162 (I) 0.35 cents; and

163 (II) the kilowatt hours of electricity produced and either used or sold during the taxable
164 year.

165 (B) (I) The credit calculated under Subsection (2)(c)(ii)(A) may be claimed for
166 production occurring during a period of 48 months beginning with the month in which the
167 commercial energy system is placed in commercial service.

168 (II) The credit allowed by this Subsection (2)(c) for each year may not be carried
169 forward or carried back.

170 (C) The credit under this Subsection (2)(c) is allowed for any commercial energy
171 system completed and placed in service on or after January 1, 2007.

172 (iii) A business entity that leases a commercial energy system installed on a
173 commercial unit is eligible for the tax credit under this Subsection (2)(c) if the lessee can
174 confirm that the lessor irrevocably elects not to claim the credit.

175 (d) (i) A tax credit under Subsection (2)(a) or (b) may be claimed for the taxable year
176 in which the energy system is completed and placed in service.

177 (ii) Additional energy systems or parts of energy systems may be claimed for
178 subsequent years.

179 (iii) If the amount of a tax credit under Subsection (2)(a) or (b) exceeds a business
180 entity's tax liability under this chapter for a taxable year, the amount of the credit exceeding the

181 liability may be carried over for a period which does not exceed the next four taxable years.

182 (3) (a) The tax credits provided for under Subsection (2) are in addition to any tax
183 credits provided under the laws or rules and regulations of the United States.

184 (b) (i) The Utah Geological Survey may set standards for residential and commercial
185 energy systems claiming a credit under Subsections (2)(a) and (b) that cover the safety,
186 reliability, efficiency, leasing, and technical feasibility of the systems to ensure that the systems
187 eligible for the tax credit use the state's renewable and nonrenewable energy resources in an
188 appropriate and economic manner.

189 (ii) The Utah Geological Survey may set standards for residential and commercial
190 energy systems that establish the reasonable costs of an energy system, as used in Subsections
191 (2)(a)(ii)(A) and (2)(b)(ii)(A), as an amount per unit of energy production.

192 (iii) A tax credit may not be taken under Subsection (2) until the Utah Geological
193 Survey has certified that the energy system has been completely installed and is a viable system
194 for saving or production of energy from renewable resources.

195 (c) The Utah Geological Survey and the commission may make rules in accordance
196 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that are necessary to
197 implement this section.

198 (4) (a) On or before October 1, 2012, and every five years thereafter, the Tax Review
199 Commission shall review the tax credits provided by this section and make recommendations
200 to the Revenue and Taxation Interim Committee concerning whether the credit should be
201 continued, modified, or repealed.

202 (b) The Tax Review Commission's report under Subsection (4)(a) shall include
203 information concerning the cost of the credit, the purpose and effectiveness of the credit, and
204 the state's benefit from the credit.

205 Section 2. Section **59-10-1106** is enacted to read:

206 **59-10-1106. Renewable energy tax credit.**

207 (1) As used in this section:

208 (a) "Active solar system" is as defined in Section 59-10-1014.

209 (b) "Biomass system" is as defined in Section 59-10-1014.

210 (c) "Business entity" is as defined in Section 59-10-1014.

211 (d) "Commercial energy system" means any active solar, passive solar, geothermal

212 electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or
213 biomass system used to supply energy to a commercial unit or as a commercial enterprise.

214 (e) "Commercial enterprise" means a business entity whose purpose is to produce
215 electrical, mechanical, or thermal energy for sale from a commercial energy system.

216 (f) (i) "Commercial unit" means any building or structure that a business entity uses to
217 transact its business except as provided in Subsection (1)(f)(ii); and

218 (ii) (A) in the case of an active solar system used for agricultural water pumping or a
219 wind system, each individual energy generating device shall be a commercial unit; and

220 (B) if an energy system is the building or structure that a business entity uses to
221 transact its business, a commercial unit is the complete energy system itself.

222 (g) "Direct-use geothermal system" is as defined in Section 59-10-1014.

223 (h) "Geothermal electricity" is as defined in Section 59-10-1014.

224 (i) "Geothermal heat-pump system" is as defined in Section 59-10-1014.

225 (j) "Hydroenergy system" is as defined in Section 59-10-1014.

226 (k) "Individual taxpayer" means any person who is a taxpayer as defined in Section
227 59-10-103 and an individual as defined in Section 59-10-103.

228 (l) "Passive solar system" is as defined in Section 59-10-1014.

229 (m) "Utah Geological Survey" means the Utah Geological Survey established in
230 Section 63-73-5.

231 (n) "Wind system" is as defined in Section 59-10-1014.

232 (2) (a) (i) For taxable years beginning on or after January 1, 2007, a business entity that
233 purchases or participates in the financing of a commercial energy system situated in Utah is
234 entitled to a tax credit as provided in this Subsection (2)(a) if the commercial energy system
235 does not use wind, geothermal electricity, or biomass equipment capable of producing a total of
236 660 or more kilowatts of electricity and:

237 (A) the commercial energy system supplies all or part of the energy required by
238 commercial units owned or used by the business entity; or

239 (B) the business entity sells all or part of the energy produced by the commercial
240 energy system as a commercial enterprise.

241 (ii) (A) A business entity is entitled to a tax credit of up to 10% of the reasonable costs
242 of any commercial energy system installed, including installation costs, against any tax due

243 under this chapter for the taxable year in which the commercial energy system is completed and
244 placed in service.

245 (B) Notwithstanding Subsection (2)(a)(ii)(A), the total amount of the credit under this
246 Subsection (2)(a) may not exceed \$50,000 per commercial unit.

247 (C) The credit under this Subsection (2)(a) is allowed for any commercial energy
248 system completed and placed in service on or after January 1, 2007.

249 (iii) A business entity that leases a commercial energy system installed on a
250 commercial unit is eligible for the tax credit under this Subsection (2)(a) if the lessee can
251 confirm that the lessor irrevocably elects not to claim the credit.

252 (iv) Only the principal recovery portion of the lease payments, which is the cost
253 incurred by a business entity in acquiring a commercial energy system, excluding interest
254 charges and maintenance expenses, is eligible for the tax credit under this Subsection (2)(a).

255 (v) A business entity that leases a commercial energy system is eligible to use the tax
256 credit under this Subsection (2)(a) for a period no greater than seven years from the initiation of
257 the lease.

258 (b) (i) For taxable years beginning on or after January 1, 2007, a business entity that
259 owns a commercial energy system situated in Utah using wind, geothermal electricity, or
260 biomass equipment capable of producing a total of 660 or more kilowatts of electricity is
261 entitled to a refundable tax credit as provided in this section if:

262 (A) the commercial energy system supplies all or part of the energy required by
263 commercial units owned or used by the business entity; or

264 (B) the business entity sells all or part of the energy produced by the commercial
265 energy system as a commercial enterprise.

266 (ii) A business entity is entitled to a tax credit under Subsection (2)(b) equal to the
267 product of:

268 (A) 0.35 cents; and

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

271 (iii) The credit allowed by this Subsection (2)(b):

272 (A) may be claimed for production occurring during a period of 48 months beginning
273 with the month in which the commercial energy system is placed in service; and

274 (B) may not be carried forward or back.
275 (iv) A business entity that leases a commercial energy system installed on a
276 commercial unit is eligible for the tax credit under this section if the lessee can confirm that the
277 lessor irrevocably elects not to claim the credit.

278 (3) The tax credits provided for under this section are in addition to any tax credits
279 provided under the laws or rules and regulations of the United States.

280 (4) (a) The Utah Geological Survey may set standards for commercial energy systems
281 claiming a tax credit under Subsection (2)(a) that cover the safety, reliability, efficiency,
282 leasing, and technical feasibility of the systems to ensure that the systems eligible for the tax
283 credit use the state's renewable and nonrenewable energy resources in an appropriate and
284 economic manner.

285 (b) A tax credit may not be taken under this section until the Utah Geological Survey
286 has certified that the commercial energy system has been completely installed and is a viable
287 system for saving or production of energy from renewable resources.

288 (5) The Utah Geological Survey and the commission may make rules in accordance
289 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that are necessary to
290 implement this section.

291 (6) (a) On or before October 1, 2012, and every five years thereafter, the Tax Review
292 Commission shall review the tax credits provided by this section and make recommendations
293 to the Revenue and Taxation Interim Committee concerning whether the credit should be
294 continued, modified, or repealed.

295 (b) The Tax Review Commission's report under Subsection (6)(a) shall include
296 information concerning the cost of the credit, the purpose and effectiveness of the credit, and
297 the state's benefit from the credit.

298 Section 3. Section **59-12-104.6** is enacted to read:

299 **59-12-104.6. Payment for residential energy system.**

300 (1) As used in this section:

301 (a) "Active solar system":

302 (i) means a system of equipment capable of collecting and converting incident solar
303 radiation into thermal, mechanical, or electrical energy, and transferring these forms of energy
304 by a separate apparatus to storage or to the point of use; and

305 (ii) includes water heating, space heating or cooling, and electrical or mechanical
306 energy generation.

307 (b) "Biomass system" means any system of apparatus and equipment for use in
308 converting material into biomass energy and transporting that energy by separate apparatus to
309 the point of use or storage.

310 (c) "Direct-use geothermal system" means a system of apparatus and equipment
311 enabling the direct use of thermal energy, generally between 100 and 300 degrees Fahrenheit,
312 that is contained in the earth to meet energy needs, including heating a building.

313 (d) "Geothermal heat-pump system" means a system of apparatus and equipment
314 enabling the use of thermal properties contained in the earth at temperatures well below 100
315 degrees Fahrenheit to help meet heating and cooling needs of a structure.

316 (e) "Hydroenergy system" means a system of apparatus and equipment capable of
317 intercepting and converting kinetic water energy into electrical or mechanical energy and
318 transferring this form of energy by separate apparatus to the point of use or storage.

319 (f) "Passive solar system":

320 (i) means a direct thermal system that utilizes the structure of a building and its
321 operable components to provide for collection, storage, and distribution of heating or cooling
322 during the appropriate times of the year by utilizing the climate resources available at the site;
323 and

324 (ii) includes those portions and components of a building that are expressly designed
325 and required for the collection, storage, and distribution of solar energy.

326 (g) "Residential energy system" means any active solar, passive solar, biomass,
327 direct-use geothermal, geothermal heat-pump system, wind, or hydroenergy system used to
328 supply energy to or for any residential unit.

329 (h) "Residential unit" means any house, condominium, apartment, or similar dwelling
330 unit that serves as a dwelling for a person, group of persons, or a family but does not include
331 property subject to a fee under:

332 (i) Section 59-2-404;

333 (ii) Section 59-2-405;

334 (iii) Section 59-2-405.1;

335 (iv) Section 59-2-405.2; or

336 (v) Section 59-2-405.3.

337 (i) "Utah Geological Survey" means the Utah Geological Survey established in Section
338 63-73-5.

339 (j) "Wind system" means a system of apparatus and equipment capable of intercepting
340 and converting wind energy into mechanical or electrical energy and transferring these forms of
341 energy by a separate apparatus to the point of use, sale, or storage.

342 (2) A person that does not claim a credit for a residential energy system under Section
343 59-7-614 is entitled to a payment of \$2,000 for a residential energy system installed in a
344 residential unit.

345 (3) The commission shall make payments under this section from revenue collected
346 under this chapter.

347 (4) (a) A payment may not be claimed under Subsection (2) until the Utah Geological
348 Survey has certified that the residential energy system has been completely installed and is a
349 viable system for saving or production of energy from renewable resources.

350 (b) The Utah Geological Survey and the commission may make rules in accordance
351 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that are necessary to
352 implement this section.

353 Section 4. **Repealer.**

354 This bill repeals:

355 Section **59-10-1014, Renewable energy systems tax credit -- Definitions --**

356 **Limitations -- State tax credit in addition to allowable federal credits -- Certification --**

357 **Rulemaking authority -- Reimbursement of Uniform School Fund.**

358 Section 5. **Retrospective operation.**

359 This bill has retrospective operation for taxable years beginning on or after January 1,
360 2007.

S.B. 13 3rd Sub. (Ivory) - Tax Incentives for Alternate Power Generation

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will reduce the Education Fund by \$688,200 in FY 2008 and by \$2,326,700 in FY 2009. There is a potential loss of General Fund of \$644,000 annually. When all facilities are expected to be fully operational (FY 2011) the revenue loss would be approximately \$5,481,700.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	(\$644,000)	(\$644,000)
Uniform School Fund	\$0	\$0	\$0	\$0	(\$688,200)	(\$2,326,700)
Total	\$0	\$0	\$0	\$0	(\$1,332,200)	(\$2,970,700)

Individual, Business and/or Local Impact

Individuals or businesses installing residential renewable energy units could receive a credit of up to \$2,000. Businesses can receive a credit of .35 cents for each kilowatt hour produced and either used or sold.
