

Representative Bradley G. Last proposes the following substitute bill:

RENEWABLE ENERGY FINANCING PROVISIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley G. Last

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill addresses provisions related to net metering programs and public utilities.

Highlighted Provisions:

This bill:

- ▶ excludes from the definition of a "public utility" an independent energy producer that provides service to a customer on the real property where an independent power production facility is located under certain circumstances;

- ▶ changes definitions to provide that a facility used to supply energy for a specific customer may qualify as a customer generation system under Title 54, Chapter 15,

Net Metering of Electricity;

- ▶ provides for actions by the Public Service Commission; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:



26 **54-2-1**, as last amended by Laws of Utah 2008, Chapter 374

27 **54-15-102**, as last amended by Laws of Utah 2008, Chapter 244

28 ENACTS:

29 **54-15-108**, Utah Code Annotated 1953

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

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

33 **54-2-1. Definitions.**

34 As used in this title:

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

39 (2) "Cogeneration facility":

40 (a) means a facility [~~which~~] that produces:

41 (i) electric energy; and

42 (ii) steam or forms of useful energy, including heat, [~~which~~] that are used for industrial,
43 commercial, heating, or cooling purposes; and

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

45 (3) "Commission" means the Public Service Commission of Utah.

46 (4) "Commissioner" means a member of the commission.

47 (5) (a) "Corporation" includes an association[;] and a joint stock company having any
48 powers or privileges not possessed by individuals or partnerships.

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

52 (6) "Distribution electrical cooperative" includes an electrical corporation that:

53 (a) is a cooperative;

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

56 (c) is required to allocate or distribute savings in excess of additions to reserves and

57 surplus on the basis of patronage to the cooperative's:

58 (i) members; or

59 (ii) patrons.

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

68 (8) "Electric plant" includes all real estate, fixtures, and personal property owned,
69 controlled, operated, or managed in connection with or to facilitate the production, generation,
70 transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits,
71 ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying
72 conductors used or to be used for the transmission of electricity for light, heat, or power.

73 (9) "Gas corporation" includes every corporation and person, their lessees, trustees, and
74 receivers, owning, controlling, operating, or managing any gas plant for public service within
75 this state or for the selling or furnishing of natural gas to any consumer or consumers within the
76 state for domestic, commercial, or industrial use, except in the situation that:

77 (a) gas is made or produced on, and distributed by the maker or producer through,
78 private property:

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

81 (ii) not for sale to others;

82 (b) gas is compressed on private property solely for the owner's own use or the use of
83 the owner's employees as a motor vehicle fuel; or

84 (c) gas is compressed by a retailer of motor vehicle fuel on the retailer's property solely
85 for sale as a motor vehicle fuel.

86 (10) "Gas plant" includes all real estate, fixtures, and personal property owned,
87 controlled, operated, or managed in connection with or to facilitate the production, generation,

88 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

89 (11) "Heat corporation" includes every corporation and person, their lessees, trustees,
90 and receivers, owning, controlling, operating, or managing any heating plant for public service
91 within this state.

92 (12) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances, and
93 personal property controlled, operated, or managed in connection with or to facilitate the
94 production, generation, transmission, delivery, or furnishing of artificial heat.

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

97 (13) "Independent energy producer" means every electrical corporation, person,
98 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
99 control, or manage an independent power production or cogeneration facility.

100 (14) "Independent power production facility" means a facility that:

101 (a) produces electric energy solely by the use, as a primary energy source, of biomass,
102 waste, a renewable resource, a geothermal resource, or any combination of the preceding
103 sources; or

104 (b) is a qualifying power production facility.

105 (15) "Private telecommunications system" includes all facilities for the transmission of
106 signs, signals, writing, images, sounds, messages, data, or other information of any nature by
107 wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio facilities, that
108 are owned, controlled, operated, or managed by a corporation or person, including their lessees,
109 trustees, receivers, or trustees appointed by any court, for the use of that corporation or person
110 and not for the shared use with or resale to any other corporation or person on a regular basis.

111 (16) (a) "Public utility" includes every railroad corporation, gas corporation, electrical
112 corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone
113 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
114 and independent energy producer not described in Subsection (16)(d), where the service is
115 performed for, or the commodity delivered to, the public generally, or in the case of a gas
116 corporation or electrical corporation where the gas or electricity is sold or furnished to any
117 member or consumers within the state for domestic, commercial, or industrial use.

118 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone

119 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
120 or independent energy producer not described in Subsection (16)(d), performs a service for or
121 delivers a commodity to the public, it is considered to be a public utility, subject to the
122 jurisdiction and regulation of the commission and this title.

123 (ii) If a gas corporation, independent energy producer not described in Subsection
124 (16)(d), or electrical corporation sells or furnishes gas or electricity to any member or
125 consumers within the state, for domestic, commercial, or industrial use, for which any
126 compensation or payment is received, it is considered to be a public utility, subject to the
127 jurisdiction and regulation of the commission and this title.

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

132 (d) An independent energy producer is exempt from the jurisdiction and regulations of
133 the commission with respect to an independent power production facility if it meets the
134 requirements of Subsection (16)(d)(i), (ii), ~~or~~ (iii), or (iv), or any combination of these:

135 (i) the commodity or service is produced or delivered, or both, by an independent
136 energy producer solely for the uses exempted in Subsection (7) or for the use of state-owned
137 facilities;

138 (ii) the commodity or service is sold by an independent energy producer solely to an
139 electrical corporation or other wholesale purchaser; ~~or~~

140 (iii) (A) the commodity or service produced or delivered by the independent energy
141 producer is delivered to an entity ~~which~~ that controls, is controlled by, or affiliated with the
142 independent energy producer or to a user located on real property managed or controlled by the
143 independent energy producer; and

144 (B) the real property on which the service or commodity is used is contiguous to real
145 property which is owned or controlled by the independent energy producer. Parcels of real
146 property separated solely by public roads or easements for public roads shall be considered as
147 contiguous for purposes of this Subsection (16)~~[-];~~ or

148 (iv) the independent energy producer:

149 (A) supplies energy to a customer that is a government entity or nonprofit entity that is

150 exempt from federal income tax;

151 (B) supplies energy to the customer through use of a customer generation system, as
152 defined in Section 54-15-102, on the real property where the customer generation system is
153 located;

154 (C) limits the provision of energy to that produced by a customer generation system
155 with a capacity of no more than 90% of the customer's energy needs, based on an annualized
156 billing period;

157 (D) notifies the customer before installing the customer generation system of:

158 (I) all costs the customer is required to pay for the customer generation system,
159 including any connection costs; and

160 (II) the potential for future changes in amounts paid by the customer for energy
161 received from a public utility and the possibility of changes to the customer fees or charges;
162 and

163 (E) installs the relevant customer generation system by December 31, 2015.

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

167 (f) (i) "Public utility" does not include any person that is otherwise considered a public
168 utility under this Subsection (16) solely because of that person's ownership of an interest in an
169 electric plant, cogeneration facility, or small power production facility in this state if all of the
170 following conditions are met:

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

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

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

176 (III) a combination of Subsections (16)(f)(i)(A)(I) and (II);

177 (B) the lessor of the ownership interest identified in Subsection (16)(f)(i)(A) is:

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

179 (II) a person whose total equity or beneficial ownership is held directly or indirectly by
180 another person engaged in a business other than the business of a public utility; and

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

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

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

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

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

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

210 (18) "Qualifying power producer" means a corporation, cooperative association, or
211 person, or the lessee, trustee, and receiver of the corporation, cooperative association, or

212 person, who owns, controls, operates, or manages any qualifying power production facility or
213 cogeneration facility.

214 (19) "Qualifying power production facility" means a facility that:

215 (a) produces electrical energy solely by the use, as a primary energy source, of biomass,
216 waste, a renewable resource, a geothermal resource, or any combination of the preceding
217 sources;

218 (b) has a power production capacity that, together with any other facilities located at
219 the same site, is no greater than 80 megawatts; and

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

221 (20) "Railroad" includes every commercial, interurban, and other railway, other than a
222 street railway, and each branch or extension of a railway, by any power operated, together with
223 all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots,
224 yards, grounds, terminals, terminal facilities, structures, and equipment, and all other real
225 estate, fixtures, and personal property of every kind used in connection with a railway owned,
226 controlled, operated, or managed for public service in the transportation of persons or property.

227 (21) "Railroad corporation" includes every corporation and person, their lessees,
228 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
229 service within this state.

230 (22) (a) "Sewerage corporation" includes every corporation and person, their lessees,
231 trustees, and receivers, owning, controlling, operating, or managing any sewerage system for
232 public service within this state.

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

237 (23) "Telegraph corporation" includes every corporation and person, their lessees,
238 trustees, and receivers, owning, controlling, operating, or managing any telegraph line for
239 public service within this state.

240 (24) "Telegraph line" includes all conduits, ducts, poles, wires, cables, instruments, and
241 appliances, and all other real estate, fixtures, and personal property owned, controlled,
242 operated, or managed in connection with or to facilitate communication by telegraph, whether

243 that communication be had with or without the use of transmission wires.

244 (25) (a) "Telephone corporation" means any corporation or person, and their lessees,
245 trustee, receivers, or trustees appointed by any court, who owns, controls, operates, manages, or
246 resells a public telecommunications service as defined in Section 54-8b-2.

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

249 (i) intrastate telephone service offered by a provider of cellular, personal
250 communication systems (PCS), or other commercial mobile radio service as defined in 47
251 U.S.C. Sec. 332 that has been issued a covering license by the Federal Communications
252 Commission;

253 (ii) Internet service; or

254 (iii) resold intrastate toll service.

255 (26) "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments,
256 and appliances, and all other real estate, fixtures, and personal property owned, controlled,
257 operated, or managed in connection with or to facilitate communication by telephone whether
258 that communication is had with or without the use of transmission wires.

259 (27) "Transportation of persons" includes every service in connection with or
260 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
261 carriage, and delivery of that person and that person's baggage.

262 (28) "Transportation of property" includes every service in connection with or
263 incidental to the transportation of property, including in particular its receipt, delivery,
264 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and
265 hauling, and the transmission of credit by express companies.

266 (29) "Water corporation" includes every corporation and person, their lessees, trustees,
267 and receivers, owning, controlling, operating, or managing any water system for public service
268 within this state. It does not include private irrigation companies engaged in distributing water
269 only to their stockholders, or towns, cities, counties, water conservancy districts, improvement
270 districts, or other governmental units created or organized under any general or special law of
271 this state.

272 (30) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes, headgates,
273 pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal

274 property owned, controlled, operated, or managed in connection with or to facilitate the
275 diversion, development, storage, supply, distribution, sale, furnishing, carriage, appointment,
276 apportionment, or measurement of water for power, fire protection, irrigation, reclamation, or
277 manufacturing, or for municipal, domestic, or other beneficial use.

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

280 (31) "Wholesale electrical cooperative" includes every electrical corporation that is:

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

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

285 Section 2. Section **54-15-102** is amended to read:

286 **54-15-102. Definitions.**

287 As used in this chapter:

288 (1) "Annualized billing period" means a 12-month billing cycle beginning on April 1 of
289 one year and ending on March 31 of the following year.

290 (2) "Customer-generated electricity" means electricity that:

291 (a) is generated by a customer generation system for a customer participating in a net
292 metering program [~~from a customer generation system~~];

293 (b) exceeds the electricity the customer needs for the customer's own use; and

294 (c) is supplied to the electrical corporation administering the net metering program.

295 (3) "Customer generation system":

296 (a) means [~~a customer-owned or customer-leased~~] an eligible facility [~~operated by the~~
297 ~~customer,~~] that is used to supply energy to or for a specific customer that:

298 (i) has a generating capacity of:

299 (A) not more than 25 kilowatts for a residential facility; or

300 (B) not more than 2 megawatts for a non-residential facility, unless the governing
301 authority approves a greater generation capacity;

302 (ii) is located on, or adjacent to, the premises of the electrical corporation's customer,
303 subject to the electrical corporation's service requirements;

304 (iii) operates in parallel and is interconnected with the electrical corporation's

305 distribution facilities;

306 (iv) is intended primarily to offset part or all of the customer's requirements for
307 electricity; and

308 (v) is controlled by an inverter or switchgear; and

309 (b) includes an electric generator and its accompanying equipment package.

310 (4) "Eligible facility" means a facility that uses energy derived from one of the
311 following to generate electricity:

312 (a) solar photovoltaic and solar thermal energy;

313 (b) wind energy;

314 (c) hydrogen;

315 (d) organic waste;

316 (e) hydroelectric energy;

317 (f) waste gas and waste heat capture or recovery;

318 (g) biomass and biomass byproducts, except for the combustion of:

319 (i) wood that has been treated with chemical preservatives such as creosote,
320 pentachlorophenol, or chromated copper arsenate; or

321 (ii) municipal waste in a solid form;

322 (h) forest or rangeland woody debris from harvesting or thinning conducted to improve
323 forest or rangeland ecological health and to reduce wildfire risk;

324 (i) agricultural residues;

325 (j) dedicated energy crops;

326 (k) landfill gas or biogas produced from organic matter, wastewater, anaerobic
327 digesters, or municipal solid waste; or

328 (l) geothermal energy.

329 (5) "Equipment package" means a group of components connecting an electric
330 generator to an electric distribution system, including all interface equipment and the interface
331 equipment's controls, switchgear, inverter, and other interface devices.

332 (6) "Excess customer-generated electricity" means the amount of customer-generated
333 electricity in excess of the customer's consumption from the customer generation system during
334 a monthly billing period, as measured at the electrical corporation's meter.

335 (7) "Fuel cell" means a device in which the energy of a reaction between a fuel and an

336 oxidant is converted directly and continuously into electrical energy.

337 (8) "Governing authority" means:

338 (a) for a distribution electrical cooperative, its board of directors; and

339 (b) for each other electrical corporation, the Public Service Commission.

340 (9) "Inverter" means a device that:

341 (a) converts direct current power into alternating current power that is compatible with
342 power generated by an electrical corporation; and

343 (b) has been designed, tested, and UL certified to UL1741 and installed and operated in
344 accordance with IEEE1547 standards.

345 (10) "Net electricity" means the difference, as measured at the meter owned by the
346 electrical corporation between:

347 (a) the amount of electricity that an electrical corporation supplies to a customer
348 participating in a net metering program; and

349 (b) the amount of customer-generated electricity delivered to the electrical corporation.

350 (11) "Net metering" means measuring the amount of net electricity for the applicable
351 billing period.

352 (12) "Net metering program" means a program administered by an electrical
353 corporation whereby a customer with a customer generation system may:

354 (a) generate electricity primarily for the customer's own use;

355 (b) supply customer-generated electricity to the electrical corporation; and

356 (c) if net metering results in excess customer-generated electricity during a billing
357 period, receive a credit under Section 54-15-104.

358 (13) "Switchgear" means the combination of electrical disconnects, fuses, or circuit
359 breakers:

360 (a) used to:

361 (i) isolate electrical equipment; and

362 (ii) de-energize equipment to allow work to be performed or faults downstream to be
363 cleared; and

364 (b) that is:

365 (i) designed, tested, and UL certified to UL1741; and

366 (ii) installed and operated in accordance with IEEE1547 standards.

367 Section 3. Section **54-15-108** is enacted to read:

368 **54-15-108. Damages and fines for connecting a customer generation system to**
369 **more than one customer.**

370 If an independent energy producer defined in Subsection 54-2-1(16)(d)(iv)(B) violates
371 the limitations set forth in Subsection 54-2-1(16)(d)(iv)(B), the commission may:

372 (1) award damages to an electrical corporation for actual and consequential damages to
373 the electrical corporation; and

374 (2) assess a fine against the person responsible for the violation.

375 Section 4. **Effective date.**

376 If approved by two-thirds of all the members elected to each house, this bill takes effect
377 upon approval by the governor, or the day following the constitutional time limit of Utah
378 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
379 the date of veto override.

H.B. 145 1st Sub. (Buff) - Renewable Energy Financing Provisions

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
