

Representative Douglas V. Sagers proposes the following substitute bill:

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 refundable 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 refundable corporate and individual income tax credits for certain commercial energy systems that use hydrogen electrolysis energy systems;
- ▶ provides a process for a lessee 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.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 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 **59-10-1106**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 1

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

36 ENACTS:

37 **59-8-201**, 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 ~~[(+)]~~ (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 ~~[(n)]~~ (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 ~~[(o)]~~ (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 the lease
216 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 refundable tax credit as provided in this Subsection (7)
267 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) A taxpayer that is a lessee of a commercial energy system installed on a commercial
288 unit may claim a tax credit under this Subsection (7) if the taxpayer obtains a written
289 certification from the office in accordance with Subsection (8).
290 ~~[(7)]~~ (8) (a) Before a taxpayer, including a lessee under Subsections (4) through (7),
291 may claim a tax credit under this section, the taxpayer shall obtain a written certification from
292 the office.
293 (b) The office shall issue a taxpayer that is not a lessee a written certification if the
294 office determines that:
295 (i) the taxpayer meets the requirements of this section to receive a tax credit; and
296 (ii) the residential energy system or commercial energy system with respect to which
297 the taxpayer seeks to claim a tax credit:
298 (A) has been completely installed;
299 (B) is a viable system for saving or producing energy from renewable resources; and
300 (C) is safe, reliable, efficient, and technically feasible to ensure that the residential
301 energy system or commercial energy system uses the state's renewable and nonrenewable
302 energy resources in an appropriate and economic manner.
303 (c) The office shall issue a taxpayer that is a lessee under Subsections (4) through (7) a
304 written certification if the office receives:

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

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

309 ~~[(e)]~~ (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
 310 Act, the office may make rules:

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

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

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

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

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

322 (ii) for each taxpayer and lessee:

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

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

325 ~~[(8)]~~ (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
 326 Act, the commission may make rules to address the certification of a tax credit under this
 327 section.

328 ~~[(9)]~~ (10) A tax credit under this section is in addition to any tax credits provided under
 329 the laws or rules and regulations of the United States.

330 Section 2. Section **59-8-201** is enacted to read:

331 **Part 2. Tax Credits**

332 **59-8-201. Renewable energy system tax credit.**

333 (1) As used in this section:

334 (a) "Commercial energy system" means the same as that term is defined in Section
 335 [59-7-614](#).

336 (b) "Commercial enterprise" means the same as that term is defined in Section
337 59-7-614.

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

339 (d) "Hydrogen electrolysis system" means the same as that term is defined in Section
340 59-7-614.

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

342 (2) (a) A taxpayer may claim a refundable tax credit against a tax due under this
343 chapter if:

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

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

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

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

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

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

356 (A) 12 cents; and

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

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

362 (c) A taxpayer that is a lessee of a commercial energy system installed on a commercial
363 unit may claim a tax credit under this section if the taxpayer obtains a written certification from
364 the office in accordance with Subsection (3).

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

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

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

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

372 (A) has been completely installed;

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

374 (C) is safe, reliable, efficient, and technically feasible to ensure that the commercial
375 energy system uses the state's renewable and nonrenewable energy resources in an appropriate
376 and economic manner.

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

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

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

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

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

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

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

392 (b) for each taxpayer and lessee:

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

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

395 Section 3. Section **59-10-1106** is amended to read:

396 **59-10-1106. Refundable renewable energy systems tax credits -- Definitions --**
397 **Certification -- Rulemaking authority.**

- 398 (1) As used in this section:
- 399 (a) "Active solar system" means the same as that term is defined in Section
- 400 [59-10-1014](#).
- 401 (b) "Biomass system" means the same as that term is defined in Section [59-10-1014](#).
- 402 (c) "Commercial energy system" means the same as that term is defined in Section
- 403 [59-7-614](#).
- 404 (d) "Commercial enterprise" means the same as that term is defined in Section
- 405 [59-7-614](#).
- 406 (e) (i) "Commercial unit" means the same as that term is defined in Section [59-7-614](#).
- 407 (ii) Notwithstanding Subsection (1)(e)(i):
- 408 (A) with respect to an active solar system used for agricultural water pumping or a
- 409 wind system, each individual energy generating device is considered to be a commercial unit;
- 410 or
- 411 (B) if an energy system is the building or structure that a claimant, estate, or trust uses
- 412 to transact business, a commercial unit is the complete energy system itself.
- 413 (f) "Direct use geothermal system" means the same as that term is defined in Section
- 414 [59-10-1014](#).
- 415 (g) "Geothermal electricity" means the same as that term is defined in Section
- 416 [59-10-1014](#).
- 417 (h) "Geothermal energy" means the same as that term is defined in Section [59-10-1014](#).
- 418 (i) "Geothermal heat pump system" means the same as that term is defined in Section
- 419 [59-10-1014](#).
- 420 (j) "Hydroenergy system" means the same as that term is defined in Section
- 421 [59-10-1014](#).
- 422 (k) "Hydrogen electrolysis system" means the same as that term is defined in Section
- 423 [59-7-614](#).
- 424 [~~(k)~~] (l) "Office" means the Office of Energy Development created in Section
- 425 [63M-4-401](#).
- 426 [~~(l)~~] (m) "Passive solar system" means the same as that term is defined in Section
- 427 [59-10-1014](#).
- 428 [~~(m)~~] (n) "Principal recovery portion" means the same as that term is defined in Section

429 59-10-1014.

430 [(m)] (o) "Wind system" means the same as that term is defined in Section 59-10-1014.

431 (2) A claimant, estate, or trust may claim an energy system tax credit as provided in
432 this section against a tax due under this chapter for a taxable year.

433 (3) (a) Subject to the other provisions of this Subsection (3), a claimant, estate, or trust
434 may claim a refundable tax credit under this Subsection (3) with respect to a commercial
435 energy system if:

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

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

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

440 (ii) the claimant, estate, or trust purchases or participates in the financing of the
441 commercial energy system;

442 (iii) (A) the commercial energy system supplies all or part of the energy required by
443 commercial units owned or used by the claimant, estate, or trust; or

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

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

448 (v) the claimant, estate, or trust obtains a written certification from the office in
449 accordance with Subsection [(6)] (7).

450 (b) (i) Subject to Subsections (3)(b)(ii) through [(v)] (iv), the tax credit is equal to 10%
451 of the reasonable costs of the commercial energy system.

452 (ii) A tax credit under this Subsection (3) may include installation costs.

453 (iii) A claimant, estate, or trust may claim a tax credit under this Subsection (3) for the
454 taxable year in which the commercial energy system is completed and placed in service.

455 [~~(iv) A tax credit under this Subsection (3) may not be carried forward or carried back.~~]

456 [(v)] (iv) The total amount of tax credit a claimant, estate, or trust may claim under this
457 Subsection (3) may not exceed \$50,000 per commercial unit.

458 (c) (i) Subject to Subsections (3)(c)(ii) and (iii), a claimant, estate, or trust that is a
459 lessee of a commercial energy system installed on a commercial unit may claim a tax credit

460 under this Subsection (3) if the claimant, estate, or trust ~~[confirms that the lessor irrevocably~~
461 ~~elects not to claim the tax credit]~~ obtains a written certification from the office in accordance
462 with Subsection (7).

463 (ii) A claimant, estate, or trust described in Subsection (3)(c)(i) may claim as a tax
464 credit under this Subsection (3) only the principal recovery portion of the lease payments.

465 (iii) A claimant, estate, or trust described in Subsection (3)(c)(i) may claim a tax credit
466 under this Subsection (3) for a period that does not exceed seven taxable years after the date the
467 lease begins, as stated in the lease agreement.

468 (4) (a) Subject to the other provisions of this Subsection (4), a claimant, estate, or trust
469 may claim a refundable tax credit under this Subsection (4) with respect to a commercial
470 energy system if:

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

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

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

477 (iii) the commercial energy system is completed and placed in service on or after
478 January 1, 2007; and

479 (iv) the claimant, estate, or trust obtains a written certification from the office in
480 accordance with Subsection ~~[(6)]~~ (7).

481 (b) (i) Subject to ~~[Subsections]~~ Subsection (4)(b)(ii) ~~[and (iii)]~~, a tax credit under this
482 Subsection (4) is equal to the product of:

483 (A) 0.35 cents; and

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

485 (ii) A tax credit under this Subsection (4) may be claimed for production occurring
486 during a period of 48 months beginning with the month in which the commercial energy
487 system is placed in commercial service.

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

489 (c) A claimant, estate, or trust that is a lessee of a commercial energy system installed
490 on a commercial unit may claim a tax credit under this Subsection (4) if the claimant, estate, or

491 trust [~~confirms that the lessor irrevocably elects not to claim the tax credit~~] obtains a written
492 certification from the office in accordance with Subsection (7).

493 (5) (a) Subject to the other provisions of this Subsection (5), a claimant, estate, or trust
494 may claim a refundable tax credit as provided in this Subsection (5) if:

495 (i) the claimant, estate, or trust owns a commercial energy system that uses solar
496 equipment capable of producing a total of 660 or more kilowatts of electricity;

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

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

501 (iii) the claimant, estate, or trust does not claim a tax credit under Subsection (3);

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

504 (v) the claimant, estate, or trust obtains a written certification from the office in
505 accordance with Subsection [~~(6)~~] (7).

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

508 (A) 0.35 cents; and

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

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

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

514 (c) A claimant, estate, or trust that is a lessee of a commercial energy system installed
515 on a commercial unit may claim a tax credit under this Subsection (5) if the claimant, estate, or
516 trust [~~confirms that the lessor irrevocably elects not to claim the tax credit~~] obtains a written
517 certification in accordance with Subsection (7).

518 (6) (a) A claimant, estate, or trust may claim a refundable tax credit as provided in this
519 Subsection (6) if:

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

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

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

526 (iii) the claimant, estate, or trust does not claim a credit under Subsection (3);

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

529 (v) the claimant, estate, or trust obtains a written certification from the office in
530 accordance with Subsection (7).

531 (b) (i) Subject to Subsection (6)(b)(ii), a tax credit under this Subsection (6) is equal to
532 the product of:

533 (A) 12 cents; and

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

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

539 (c) A claimant, estate, or trust that is a lessee of a commercial energy system installed
540 on a commercial unit may claim a tax credit under this Subsection (6) if the claimant, estate, or
541 trust obtains a written certification from the office in accordance with Subsection (7).

542 [~~(6)~~] (7) (a) Before a claimant, estate, or trust, including a lessee under Subsections (3)
543 through (6), may claim a tax credit under this section, the claimant, estate, or trust shall obtain
544 a written certification from the office.

545 (b) The office shall issue a claimant, estate, or trust that is not a lessee a written
546 certification if the office determines that:

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

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

551 (A) has been completely installed;

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

553 (C) is safe, reliable, efficient, and technically feasible to ensure that the commercial
554 energy system uses the state's renewable and nonrenewable resources in an appropriate and
555 economic manner.

556 (c) The office shall issue a claimant, estate, or trust that is a lessee under Subsections
557 (3) through (6) a written certification if the office receives:

558 (i) a copy of the lessor's written certification or other proof, in a form established by the
559 office, that the lessor qualified for a tax credit under Subsection (3), (4), (5), or (6); and

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

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

564 (i) for determining whether a commercial energy system meets the requirements of
565 Subsection [~~(6)~~] (7)(b)(ii); and

566 (ii) for purposes of a tax credit under Subsection (3), establishing the reasonable costs
567 of a commercial energy system, as an amount per unit of energy production.

568 [~~(d)~~] (e) A claimant, estate, or trust, including a lessee under Subsections (3) through
569 (6), that obtains a written certification from the office shall retain the written certification for
570 the same time period a person is required to keep books and records under Section 59-1-1406.

571 [~~(7)~~] (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
572 Act, the commission may make rules to address the certification of a tax credit under this
573 section.

574 [~~(8)~~] (9) A tax credit under this section is in addition to any tax credits provided under
575 the laws or rules and regulations of the United States.

576 [~~(9)~~] (10) A purchaser of one or more solar units that claims a tax credit under Section
577 59-10-1024 for the purchase of the one or more solar units may not claim a tax credit under this
578 section for that purchase.

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

580 **63M-4-602. Definitions.**

581 As used in this part:

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

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

588 (3) "High cost infrastructure project" means a project:

589 (a) (i) that expands or creates new industrial, mining, manufacturing, or agriculture
590 activity in the state, not including a retail business;

591 (ii) that involves new investment of at least \$50,000,000 in an existing industrial,
592 mining, manufacturing, or agriculture entity, by the entity; or

593 (iii) for the construction of a plant or other facility, including a fueling station, for the
594 storage, production, or distribution of hydrogen fuel used for transportation, electricity
595 generation, or industrial use;

596 (b) that requires or is directly facilitated by infrastructure construction; and

597 (c) for which the cost of infrastructure construction to the entity creating the project is
598 greater than:

599 (i) 10% of the total cost of the project; or

600 (ii) \$10,000,000.

601 (4) "Infrastructure" means:

602 (a) an energy delivery project as defined in Section [63H-2-102](#);

603 (b) a railroad as defined in Section [54-2-1](#);

604 (c) a fuel standard compliance project;

605 (d) a road improvement project;

606 (e) a water self-supply project;

607 (f) a water removal system project;

608 (g) a solution-mined subsurface salt cavern; ~~or~~

609 (h) a project that is designed to:

610 (i) increase the capacity for water delivery to a water user in the state; or

611 (ii) increase the capability of an existing water delivery system or related facility to
612 deliver water to a water user in the state~~[-];~~ or

613 (i) a hydrogen fuel production or distribution project.

614 (5) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an

615 agreement with the office that qualifies the applicant to receive a tax credit as provided in this
616 part.

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

619 (6) "Infrastructure-related revenue" means an amount of tax revenue, for an entity
620 creating a high cost infrastructure project, in a taxable year, that is directly attributable to a high
621 cost infrastructure project, under:

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

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

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

625 (7) "Office" means the Office of Energy Development created in Section [63M-4-401](#).

626 (8) "Tax credit" means a tax credit under Section [59-7-619](#) or [59-10-1034](#).

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

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

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

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

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

634 **Section 5. Retrospective operation.**

635 The changes to Sections [59-7-614](#), [59-10-1106](#), and [63M-4-602](#) have retrospective
636 operation for a taxable year beginning on or after January 1, 2020.

637 **Section 6. Effective date.**

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

639 (2) The changes to Section [59-8-201](#) take effect for a taxable year beginning on or after
640 July 1, 2020.