

**HYDROGEN TAX CREDIT AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Douglas V. Sagers**

Senate Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

This bill creates tax credit provisions related to hydrogen energy.

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None



28 **Other Special Clauses:**

29 This bill provides a special effective date.

30 This bill provides retrospective operation.

31 **Utah Code Sections Affected:**

32 AMENDS:

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

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

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

36 ENACTS:

37 **59-8-201**, 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 ~~(l)~~ (l) "Office" means the Office of Energy Development created in Section

98 [63M-4-401.](#)

99 ~~(m)~~ (m) (i) "Passive solar system" means a direct thermal system that utilizes the  
100 structure of a building and ~~[its]~~ the structure's operable components to provide for collection,  
101 storage, and distribution of heating or cooling during the appropriate times of the year by  
102 utilizing the 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 ~~(n)~~ (n) "Photovoltaic system" means an active solar system that generates electricity  
106 from sunlight.

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

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

110 (A) an interest charge; or

111 (B) a maintenance expense.

112 (p) "Renewable energy source" means the same as that term is defined in Section

113 [54-17-601.](#)

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

116 (i) an active solar system;

117 (ii) a biomass system;

118 (iii) a direct use geothermal system;

119 (iv) a geothermal heat pump system;

120 (v) a hydroenergy system;

121 (vi) a passive solar system; or

122 (vii) a wind system.

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

125 (A) is located in the state; and

126 (B) serves as a dwelling for a person, group of persons, or a family.

127 (ii) "Residential unit" does not include property subject to a fee under:

128 (A) Section 59-2-405;

129 (B) Section 59-2-405.1;

130 (C) Section 59-2-405.2;

131 (D) Section 59-2-405.3; or

132 (E) Section 72-10-110.5.

133 ~~[(q)]~~ (s) "Wind system" means a system of apparatus and equipment that is capable of:

134 (i) intercepting and converting wind energy into mechanical or electrical energy; and

135 (ii) transferring these forms of energy by a separate apparatus to the point of use, sale,  
136 or storage.

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

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

142 (i) the taxpayer:

143 (A) purchases and completes a residential energy system to supply all or part of the  
144 energy required for the residential unit; or

145 (B) participates in the financing of a residential energy system to supply all or part of  
146 the energy required for the residential unit;

147 (ii) the residential energy system is completed and placed in service on or after January  
148 1, 2007; and

149 (iii) the taxpayer obtains a written certification from the office in accordance with  
150 Subsection ~~[(7)]~~ (8).

151 (b) (i) Subject to Subsections (3)(b)(ii) through (iv) and, as applicable, Subsection

152 (3)(c) or (d), the tax credit is equal to 25% of the reasonable costs of each residential energy  
153 system installed with respect to each residential unit the taxpayer owns or uses.

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

155 (iii) A taxpayer may claim a tax credit under this Subsection (3) for the taxable year in  
156 which the residential energy system is completed and placed in service.

157 (iv) If the amount of a tax credit under this Subsection (3) exceeds a taxpayer's tax  
158 liability under this chapter for a taxable year, the taxpayer may carry forward the amount of the  
159 tax credit exceeding the liability [~~may be carried forward~~] for a period that does not exceed the  
160 next four taxable years.

161 (c) The total amount of tax credit a taxpayer may claim under this Subsection (3) for a  
162 residential energy system, other than a photovoltaic system, may not exceed \$2,000 per  
163 residential unit.

164 (d) The total amount of tax credit a taxpayer may claim under this Subsection (3) for a  
165 photovoltaic system may not exceed:

166 (i) for a system installed on or after January 1, 2018, but on or before December 31,  
167 2020, \$1,600;

168 (ii) for a system installed on or after January 1, 2021, but on or before December 31,  
169 2021, \$1,200;

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

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

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

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

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

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

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

183 the requirements of Section 59-10-1014 to claim the tax credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

231 (A) 0.35 cents; and

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

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

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

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

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

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



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

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

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

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

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

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

256 (A) 0.35 cents; and

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

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

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

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

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

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

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

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

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

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

276 January 1, 2015; and

277 (v) the taxpayer obtains a written certification from the office in accordance with

278 Subsection (8).

279 (b) (i) Subject to Subsection (7)(b)(ii), a tax credit under this Subsection (7) is equal to

280 the product of:

281 (A) 12 cents; and

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

283 year.

284 (ii) A taxpayer may claim a tax credit for production occurring during a period of 48

285 months beginning with the month in which the commercial energy system is placed in

286 commercial service.

287 (c) If the amount of a tax credit under this Subsection (7) exceeds a taxpayer's tax

288 liability under this chapter for a taxable year, the taxpayer may carry forward the amount of the

289 tax credit exceeding the liability for a period that does not exceed the next four taxable years.

290 (d) (i) Subject to Subsections (7)(d)(ii) and (iii), a taxpayer that is a lessee of a

291 commercial energy system installed on a commercial unit may claim a tax credit under this

292 Subsection (7) if the taxpayer obtains a written certification from the office in accordance with

293 Subsection (8).

294 (ii) A taxpayer described in Subsection (7)(d)(i) may claim as a tax credit under this

295 Subsection (7) only the principal recovery portion of the lease payments.

296 (iii) A taxpayer described in Subsection (7)(d)(i) may claim a tax credit under this

297 Subsection (7) for a period that does not exceed seven taxable years after the day on which the

298 lease begins, as stated in the lease agreement.

299 [~~(7)~~] (8) (a) Before a taxpayer, including a lessee under Subsection (4), (5), (6), or (7),

300 may claim a tax credit under this section, the taxpayer shall obtain a written certification from

301 the office.

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

303 office determines that:

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

305 (ii) the residential energy system or commercial energy system with respect to which

306 the taxpayer seeks to claim a tax credit:

- 307 (A) has been completely installed;
- 308 (B) is a viable system for saving or producing energy from renewable resources; and
- 309 (C) is safe, reliable, efficient, and technically feasible to ensure that the residential
- 310 energy system or commercial energy system uses the state's renewable and nonrenewable
- 311 energy resources in an appropriate and economic manner.
- 312 (c) The office shall issue a taxpayer that is a lessee a written certification if the office
- 313 receives:
- 314 (i) a copy of the lessor's written certification or other proof, in a form established by the
- 315 office, that the lessor qualified for a tax credit under Subsection (4), (5), (6), or (7); and
- 316 (ii) proof that the lessor irrevocably elects not to claim the tax credit for which the
- 317 lessor qualified.
- 318 ~~(c)~~ (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
- 319 Act, the office may make rules:
- 320 (i) for determining whether a residential energy system or commercial energy system
- 321 meets the requirements of Subsection ~~(7)~~ (8)(b)(ii); and
- 322 (ii) for purposes of a tax credit under Subsection (3) or (4), establishing the reasonable
- 323 costs of a residential energy system or a commercial energy system, as an amount per unit of
- 324 energy production.
- 325 ~~(d)~~ (e) A taxpayer, including a lessee, that obtains a written certification from the
- 326 office shall retain the written certification for the same time period a person is required to keep
- 327 books and records under Section [59-1-1406](#).
- 328 ~~(e)~~ (f) The office shall submit to the commission an electronic list that includes:
- 329 (i) the name and identifying information of each taxpayer or lessee to which the office
- 330 issues a written certification; and
- 331 (ii) for each taxpayer or lessee:
- 332 (A) the amount of the tax credit listed on the written certification; and
- 333 (B) the date the renewable energy system was installed.
- 334 ~~(f)~~ (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
- 335 Act, the commission may make rules to address the certification of a tax credit under this
- 336 section.
- 337 ~~(g)~~ (10) A tax credit under this section is in addition to any tax credits provided under

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

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

340 **Part 2. Nonrefundable Tax Credits**

341 **59-8-201. Nonrefundable commercial renewable energy system tax credit.**

342 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

365 (A) 12 cents; and

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

368 (ii) A taxpayer may claim a tax credit for production occurring during a period of 48

369 months beginning with the month in which the commercial energy system is placed in  
370 commercial service.

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

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

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

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

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

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

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

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

390 (A) has been completely installed;

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

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

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

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

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

400 lessor qualified.

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

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

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

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

410 (b) for each taxpayer or lessee:

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

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

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

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

416 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

465           (A) an interest charge; or

466           (B) a maintenance expense.

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

469           (i) an active solar system;

470           (ii) a biomass system;

471           (iii) a direct use geothermal system;

472           (iv) a geothermal heat pump system;

473           (v) a hydroenergy system;

474           (vi) a passive solar system; or

475           (vii) a wind system.

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

478           (A) is located in the state; and

479           (B) serves as a dwelling for a person, group of persons, or a family.

480           (ii) "Residential unit" does not include property subject to a fee under:

481           (A) Section 59-2-405;

482           (B) Section 59-2-405.1;

483           (C) Section 59-2-405.2;

484           (D) Section 59-2-405.3; or

485           (E) Section 72-10-110.5.

486           ~~[(n)]~~ (r) "Wind system" means a system of apparatus and equipment that is capable of:

487           (i) intercepting and converting wind energy into mechanical or electrical energy; and

488           (ii) transferring these forms of energy by a separate apparatus to the point of use or  
489 storage.

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

492           (3) ~~[For a taxable year beginning on or after January 1, 2007, a]~~ (a) A claimant, estate,



493 or trust may claim a nonrefundable tax credit under this ~~[section]~~ Subsection (3) with respect to  
494 a residential unit the claimant, estate, or trust owns or uses if:

495 ~~[(a)]~~ (i) the claimant, estate, or trust:

496 ~~[(i)]~~ (A) purchases and completes a residential energy system to supply all or part of  
497 the energy required for the residential unit; or

498 ~~[(ii)]~~ (B) participates in the financing of a residential energy system to supply all or  
499 part of the energy required for the residential unit;

500 ~~[(b)]~~ (ii) the residential energy system is installed on or after January 1, 2007; and

501 ~~[(c)]~~ (iii) the claimant, estate, or trust obtains a written certification from the office in  
502 accordance with Subsection (5).

503 ~~[(4)(a)]~~ (b) For a residential energy system, other than a photovoltaic system, the tax  
504 credit described in this section is equal to the lesser of:

505 (i) 25% of the reasonable costs, including installation costs, of each residential energy  
506 system installed with respect to each residential unit the claimant, estate, or trust owns or uses;  
507 and

508 (ii) \$2,000.

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

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

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

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

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

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

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

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

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

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

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

531           ~~[(e)]~~ (f) If the amount of a tax credit listed on the written certification exceeds a  
532 claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the claimant,  
533 estate, or trust may carry forward the amount of the tax credit exceeding the liability for a  
534 period that does not exceed the next four taxable years.

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

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

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

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

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

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

554           (ii) (A) if the other person files a return under Chapter 7, Corporate Franchise and

555 Income Taxes, the other person may claim the tax credit as if the other person had met the  
556 requirements of Section 59-7-614 to claim the tax credit; or

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

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

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

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

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

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

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

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

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

576 (A) 12 cents; and

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

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

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

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

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

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

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

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

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

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

604 (A) has been completely installed;

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

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

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

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

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

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

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

619 (ii) for purposes of determining the amount of a tax credit that a claimant, estate, or  
620 trust may receive under Subsection ~~[(4)]~~ (3), establishing the reasonable costs of a residential  
621 energy system, as an amount per unit of energy production.

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

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

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

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

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

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

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

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

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

637 **63M-4-602. Definitions.**

638 As used in this part:

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

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

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

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

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

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

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

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

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

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

658 (4) "Infrastructure" means:

659 (a) an energy delivery project as defined in Section 63H-2-102;

660 (b) a railroad as defined in Section 54-2-1;

661 (c) a fuel standard compliance project;

662 (d) a road improvement project;

663 (e) a water self-supply project;

664 (f) a water removal system project;

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

666 (h) a project that is designed to:

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

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

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

671 (5) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an  
672 agreement with the office that qualifies the applicant to receive a tax credit as provided in this  
673 part.

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

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

- 679 (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
- 680 (b) Title 59, Chapter 10, Individual Income Tax Act; and
- 681 (c) Title 59, Chapter 12, Sales and Use Tax Act.
- 682 (7) "Office" means the Office of Energy Development created in Section [63M-4-401](#).
- 683 (8) "Tax credit" means a tax credit under Section [59-7-619](#) or [59-10-1034](#).
- 684 (9) "Tax credit certificate" means a certificate issued by the office to an infrastructure
- 685 cost-burdened entity that:
  - 686 (a) lists the name of the infrastructure cost-burdened entity;
  - 687 (b) lists the infrastructure cost-burdened entity's taxpayer identification number;
  - 688 (c) lists, for a taxable year, the amount of the tax credit authorized for the infrastructure
  - 689 cost-burdened entity under this part; and
  - 690 (d) includes other information as determined by the office.

691 **Section 5. Effective date.**

- 692 (1) Except as provided in Subsection (2), this bill takes effect on May 5, 2021.
- 693 (2) The enactment of Section [59-8-201](#) takes effect for a taxable year beginning on or
- 694 after July 1, 2021.

695 **Section 6. Retrospective operation.**

696 The changes to Sections [59-7-614](#), [59-10-1014](#), and [63M-4-602](#) have retrospective

697 operation for a taxable year beginning on or after January 1, 2021.