

Representative Douglas V. Sagers proposes the following substitute bill:

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 nonrefundable corporate and individual income tax credits for certain hydrogen production systems;
- ▶ provides a process for a lessee to obtain a written certification to claim a commercial renewable energy system income tax credit;
- ▶ modifies the definitions of "high cost infrastructure project" and "infrastructure" for purposes of qualifying for a high cost infrastructure development tax credit; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

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



26 [59-10-1014](#), as last amended by Laws of Utah 2019, Chapter 247
27 [63M-4-602](#), as last amended by Laws of Utah 2019, Chapter 501



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

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

31 **59-7-614. Renewable energy systems tax credits -- Definitions -- Certification --**

32 **Rulemaking authority.**

33 (1) As used in this section:

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

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

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

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

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

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

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

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

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

46 (B) a biomass system;

47 (C) a direct use geothermal system;

48 (D) a geothermal electricity system;

49 (E) a geothermal heat pump system;

50 (F) a hydroenergy system;

51 (G) a hydrogen system;

52 [~~(G)~~] (H) a passive solar system; or

53 [~~(H)~~] (I) a wind system;

54 (ii) located in the state; and

55 (iii) used:

56 (A) to supply energy to a commercial unit; or

57 (B) as a commercial enterprise.

58 (d) "Commercial enterprise" means an entity, the purpose of which is to produce
59 electrical, mechanical, or thermal energy for sale from a commercial energy system.

60 (e) (i) "Commercial unit" means a building or structure that an entity uses to transact
61 business.

62 (ii) Notwithstanding Subsection (1)(e)(i):

63 (A) with respect to an active solar system used for agricultural water pumping or a
64 wind system, each individual energy generating device is considered to be a commercial unit;

65 or

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

68 (f) "Direct use geothermal system" means a system of apparatus and equipment that
69 enables the direct use of geothermal energy to meet energy needs, including heating a building,
70 an industrial process, and aquaculture.

71 (g) "Geothermal electricity" means energy that is:

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

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

74 (h) "Geothermal energy" means energy generated by heat that is contained in the earth.

75 (i) "Geothermal heat pump system" means a system of apparatus and equipment that:

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

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

79 (j) "Hydroenergy system" means a system of apparatus and equipment that is capable

80 of:

81 (i) intercepting and converting kinetic water energy into electrical or mechanical
82 energy; and

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

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

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

86 (ii) uses a renewable energy source to create hydrogen.

87 ~~(k)~~ (l) "Office" means the Office of Energy Development created in Section

88 [63M-4-401](#).

89 ~~[(t)]~~ (m) (i) "Passive solar system" means a direct thermal system that utilizes the
90 structure of a building and ~~[its]~~ the structure's operable components to provide for collection,
91 storage, and distribution of heating or cooling during the appropriate times of the year by
92 utilizing the climate resources available at the site.

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

95 ~~[(m)]~~ (n) "Photovoltaic system" means an active solar system that generates electricity
96 from sunlight.

97 ~~[(n)]~~ (o) (i) "Principal recovery portion" means the portion of a lease payment that
98 constitutes the cost a person incurs in acquiring a commercial energy system.

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

100 (A) an interest charge; or

101 (B) a maintenance expense.

102 (p) "Renewable energy source" means the same as that term is defined in Section
103 [54-17-601](#).

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

106 (i) an active solar system;

107 (ii) a biomass system;

108 (iii) a direct use geothermal system;

109 (iv) a geothermal heat pump system;

110 (v) a hydroenergy system;

111 (vi) a passive solar system; or

112 (vii) a wind system.

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

115 (A) is located in the state; and

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

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

118 (A) Section [59-2-405](#);

119 (B) Section 59-2-405.1;

120 (C) Section 59-2-405.2;

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

122 (E) Section 72-10-110.5.

123 [(7)] (s) "Wind system" means a system of apparatus and equipment that is capable of:

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

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

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

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

132 (i) the taxpayer:

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

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

137 (ii) the residential energy system is completed and placed in service on or after January
138 1, 2007; and

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

141 (b) (i) Subject to Subsections (3)(b)(ii) through (iv) and, as applicable, Subsection
142 (3)(c) or (d), the tax credit is equal to 25% of the reasonable costs of each residential energy
143 system installed with respect to each residential unit the taxpayer owns or uses.

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

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

147 (iv) If the amount of a tax credit under this Subsection (3) exceeds a taxpayer's tax
148 liability under this chapter for a taxable year, the taxpayer may carry forward the amount of the
149 tax credit exceeding the liability [~~may be carried forward~~] for a period that does not exceed the

150 next four taxable years.

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

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

156 (i) for a system installed on or after January 1, 2018, but on or before December 31,
157 2020, \$1,600;

158 (ii) for a system installed on or after January 1, 2021, but on or before December 31,
159 2021, \$1,200;

160 (iii) for a system installed on or after January 1, 2022, but on or before December 31,
161 2022, \$800;

162 (iv) for a system installed on or after January 1, 2023, but on or before December 31,
163 2023, \$400; and

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

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

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

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

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

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

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

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

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

180 (ii) the taxpayer purchases or participates in the financing of the commercial energy

181 system;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

211 (ii) (A) the commercial energy system supplies all or part of the energy required by

212 commercial units owned or used by the taxpayer; or

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

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

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

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

221 (A) 0.35 cents; and

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

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

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

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

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

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

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

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

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

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

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

243 Subsection ~~[(7)]~~ (8).

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

246 (A) 0.35 cents; and

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

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

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

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

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

258 (i) the taxpayer owns a commercial energy system that is a hydrogen system having a
259 rated capacity of two megawatts or greater;

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

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

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

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

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

269 (b) (i) Subject to Subsections (7)(b)(ii) and (iii), a tax credit under this Subsection (7)
270 is equal to the product of:

271 (A) 12 cents; and

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

274 (ii) A taxpayer may not receive a tax credit under this Subsection (7) for more than
275 5,600 metric tons of hydrogen per taxable year.

276 (iii) A taxpayer may claim a tax credit for production occurring during a period of 48
277 months beginning with the month in which the commercial energy system is placed in
278 commercial service.

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

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

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

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

291 [~~(7)~~] (8) (a) Before a taxpayer, including a lessee under Subsection (4), (5), (6), or (7),
292 may claim a tax credit under this section, the taxpayer shall obtain a written certification from
293 the office.

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

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

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

299 (A) has been completely installed;

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

301 (C) is safe, reliable, efficient, and technically feasible to ensure that the residential
302 energy system or commercial energy system uses the state's renewable and nonrenewable
303 energy resources in an appropriate and economic manner.

304 (c) The office shall issue a taxpayer that is a lessee a written certification if the office

305 receives:

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

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

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

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

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

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

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

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

323 (ii) for each taxpayer or lessee:

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

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

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

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

331 Section 2. Section **59-10-1014** is amended to read:

332 **59-10-1014. Nonrefundable renewable energy systems tax credits -- Definitions --**

333 **Certification -- Rulemaking authority.**

334 (1) As used in this section:

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

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

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

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

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

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

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

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

347 (d) "Commercial enterprise" means the same as that term is defined in Section
348 [59-7-614](#).

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

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

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

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

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

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

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

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

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

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

365 (i) intercepting and converting kinetic water energy into electrical or mechanical
366 energy; and

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

368 (k) "Hydrogen system" means the same as that term is defined in Section [59-7-614](#).

369 ~~(h)~~ (l) "Office" means the Office of Energy Development created in Section
370 [63M-4-401](#).

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

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

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

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

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

382 (A) an interest charge; or

383 (B) a maintenance expense.

384 ~~(h)~~ (p) "Residential energy system" means the following used to supply energy to or
385 for a residential unit:

386 (i) an active solar system;

387 (ii) a biomass system;

388 (iii) a direct use geothermal system;

389 (iv) a geothermal heat pump system;

390 (v) a hydroenergy system;

391 (vi) a passive solar system; or

392 (vii) a wind system.

393 ~~(m)~~ (q) (i) "Residential unit" means a house, condominium, apartment, or similar
394 dwelling unit that:

395 (A) is located in the state; and

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

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

398 (A) Section [59-2-405](#);

399 (B) Section [59-2-405.1](#);

400 (C) Section [59-2-405.2](#);

401 (D) Section [59-2-405.3](#); or

402 (E) Section [72-10-110.5](#).

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

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

405 (ii) transferring these forms of energy by a separate apparatus to the point of use or

406 storage.

407 (2) A claimant, estate, or trust may claim an energy system tax credit as provided in

408 this section against a tax due under this chapter for a taxable year.

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

410 or trust may claim a nonrefundable tax credit under this ~~[section]~~ Subsection (3) with respect to

411 a residential unit the claimant, estate, or trust owns or uses if:

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

413 ~~[(i)]~~ (A) purchases and completes a residential energy system to supply all or part of

414 the energy required for the residential unit; or

415 ~~[(ii)]~~ (B) participates in the financing of a residential energy system to supply all or

416 part of the energy required for the residential unit;

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

418 ~~[(c)]~~ (iii) the claimant, estate, or trust obtains a written certification from the office in

419 accordance with Subsection (5).

420 ~~[(4)(a)]~~ (b) For a residential energy system, other than a photovoltaic system, the tax

421 credit described in this section is equal to the lesser of:

422 (i) 25% of the reasonable costs, including installation costs, of each residential energy

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

424 and

425 (ii) \$2,000.

426 ~~[(b) Subject to Subsection (5)(d), for]~~ (c) For a residential energy system that is a

427 photovoltaic system, the tax credit described in this section is equal to the lesser of:

428 (i) 25% of the reasonable costs, including installation costs, of each system installed

429 with respect to each residential unit the claimant, estate, or trust owns or uses; or

430 (ii) (A) for a system installed on or after January 1, 2007, but on or before December
431 31, 2017, \$2,000;

432 (B) for a system installed on or after January 1, 2018, but on or before December 31,
433 2020, \$1,600;

434 (C) for a system installed on or after January 1, 2021, but on or before December 31,
435 2021, \$1,200;

436 (D) for a system installed on or after January 1, 2022, but on or before December 31,
437 2022, \$800;

438 (E) for a system installed on or after January 1, 2023, but on or before December 31,
439 2023, \$400; and

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

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

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

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

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

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

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

460 with Subsection (5).

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

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

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

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

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

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

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

479 (i) the claimant, estate, or trust owns a commercial energy system that is a hydrogen
480 system having a rated capacity of two megawatts or greater;

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

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

485 (iii) the claimant, estate, or trust does not claim a credit under Subsection
486 59-10-1106(3);

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

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

491 (b) (i) Subject to Subsections (4)(b)(ii) and (iii), a tax credit under this Subsection (4)
492 is equal to the product of:

493 (A) 12 cents; and

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

496 (ii) A claimant, estate, or trust may not receive a tax credit under this Subsection (4) for
497 more than 5,600 metric tons of hydrogen per taxable year.

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

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

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

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

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

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

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

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

521 (ii) the office determines that the residential energy system with respect to which the

522 claimant, estate, or trust seeks to claim a tax credit:

523 (A) has been completely installed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

552 (7) A purchaser of one or more solar units that claims a tax credit under Section

553 59-10-1024 for the purchase of the one or more solar units may not claim a tax credit under this
554 section for that purchase.

555 Section 3. Section 63M-4-602 is amended to read:

556 **63M-4-602. Definitions.**

557 As used in this part:

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

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

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

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

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

569 (iii) for the construction of a plant, a pipeline, or other facility, including a fueling
570 station, for the storage, production, or distribution of hydrogen fuel produced using renewable
571 energy, as defined in Section 54-17-601, and used for transportation, electricity generation, or
572 industrial use;

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

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

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

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

578 (4) "Infrastructure" means:

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

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

581 (c) a fuel standard compliance project;

582 (d) a road improvement project;

583 (e) a water self-supply project;

- 584 (f) a water removal system project;
- 585 (g) a solution-mined subsurface salt cavern; [or]
- 586 (h) a project that is designed to:
- 587 (i) increase the capacity for water delivery to a water user in the state; or
- 588 (ii) increase the capability of an existing water delivery system or related facility to
- 589 deliver water to a water user in the state[-]; or
- 590 (i) a hydrogen fuel production or distribution project.
- 591 (5) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an
- 592 agreement with the office that qualifies the applicant to receive a tax credit as provided in this
- 593 part.
- 594 (b) "Infrastructure cost-burdened entity" includes a pass-through entity taxpayer, as
- 595 defined in Section [59-10-1402](#), of a person described in Subsection (5)(a).
- 596 (6) "Infrastructure-related revenue" means an amount of tax revenue, for an entity
- 597 creating a high cost infrastructure project, in a taxable year, that is directly attributable to a high
- 598 cost infrastructure project, under:
- 599 (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
- 600 (b) Title 59, Chapter 10, Individual Income Tax Act; and
- 601 (c) Title 59, Chapter 12, Sales and Use Tax Act.
- 602 (7) "Office" means the Office of Energy Development created in Section [63M-4-401](#).
- 603 (8) "Tax credit" means a tax credit under Section [59-7-619](#) or [59-10-1034](#).
- 604 (9) "Tax credit certificate" means a certificate issued by the office to an infrastructure
- 605 cost-burdened entity that:
- 606 (a) lists the name of the infrastructure cost-burdened entity;
- 607 (b) lists the infrastructure cost-burdened entity's taxpayer identification number;
- 608 (c) lists, for a taxable year, the amount of the tax credit authorized for the infrastructure
- 609 cost-burdened entity under this part; and
- 610 (d) includes other information as determined by the office.
- 611 **Section 4. Retrospective operation.**
- 612 This bill has retrospective operation for a taxable year beginning on or after January 1,
- 613 2021.