

INCOME TAX CREDIT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas V. Sagers

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill modifies income tax credit provisions to address hydrogen.

Highlighted Provisions:

This bill:

- ▶ 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.

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

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

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



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

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

59-7-614. Renewable energy systems tax credits -- Definitions -- Certification -- Rulemaking authority.

(1) As used in this section:

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

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

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

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

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

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

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

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

(i) (A) an active solar system;

(B) a biomass system;

(C) a direct use geothermal system;

(D) a geothermal electricity system;

(E) a geothermal heat pump system;

(F) a hydroenergy system;

(G) a hydrogen electrolysis system;

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

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

(ii) located in the state; and

(iii) used:

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

(B) as a commercial enterprise.

(d) "Commercial enterprise" means an entity, the purpose of which is to produce

electrical, mechanical, or thermal energy for sale from a commercial energy system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) uses electricity from a renewable energy source to create hydrogen gas from water.

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

~~[(k)]~~ (m) (i) "Passive solar system" means a direct thermal system that utilizes the

structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site.

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

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

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

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

(A) an interest charge; or

(B) a maintenance expense.

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

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

(i) an active solar system;

(ii) a biomass system;

(iii) a direct use geothermal system;

(iv) a geothermal heat pump system;

(v) a hydroenergy system;

(vi) a passive solar system; or

(vii) a wind system.

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

(A) is located in the state; and

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

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

(A) Section 59-2-405;

(B) Section 59-2-405.1;

(C) Section 59-2-405.2;

(D) Section 59-2-405.3; or

(E) Section 72-10-110.5.

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

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

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

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

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

(i) the taxpayer:

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

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

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

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

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

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

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

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

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

residential unit.

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

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

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

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

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

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

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

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

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

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

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

(i) the commercial energy system does not use:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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 (5)(b)(ii) and (iii), a tax credit under this Subsection (5)
220 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 taxpayer may not carry forward or carry back a tax credit under this Subsection
227 (5) [may not be carried forward or carried back].

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

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

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

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

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

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

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

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

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

(A) 0.35 cents; and

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

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

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

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

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

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

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

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

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

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

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

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

(A) 12 cents; and

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

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

(iii) A taxpayer may not carry forward or carry back a tax credit under this Subsection (7).

(c) A taxpayer that is a lessee of a commercial energy system installed on a commercial unit may claim a tax credit under this Subsection (7) if the taxpayer obtains a written certification from the office in accordance with Subsection (8).

~~[(7)]~~ (8) (a) Before a taxpayer, including a lessee under Subsections (4) through (7), may claim a tax credit under this section, the taxpayer shall obtain a written certification from the office.

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

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

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

(A) has been completely installed;

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

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

(c) The office shall issue a taxpayer that is a lessee under Subsections (4) through (7) a written certification if the office receives:

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

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

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

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

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

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

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

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

(ii) for each taxpayer and lessee:

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

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

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

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

Section 2. Section 59-10-1106 is amended to read:

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

(1) As used in this section:

(a) "Active solar system" means the same as that term is defined in Section 59-10-1014.

(b) "Biomass system" means the same as that term is defined in Section 59-10-1014.

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

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

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

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

(A) with respect to an active solar system used for agricultural water pumping or a

wind system, each individual energy generating device is considered to be a commercial unit;
or

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

(f) "Direct use geothermal system" means the same as that term is defined in Section 59-10-1014.

(g) "Geothermal electricity" means the same as that term is defined in Section 59-10-1014.

(h) "Geothermal energy" means the same as that term is defined in Section 59-10-1014.

(i) "Geothermal heat pump system" means the same as that term is defined in Section 59-10-1014.

(j) "Hydroenergy system" means the same as that term is defined in Section 59-10-1014.

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

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

~~[(h)]~~ (m) "Passive solar system" means the same as that term is defined in Section 59-10-1014.

~~[(m)]~~ (n) "Principal recovery portion" means the same as that term is defined in Section 59-10-1014.

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

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

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

(i) the commercial energy system does not use:

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

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

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

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

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

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

(v) the claimant, estate, or trust obtains a written certification from the office in accordance with Subsection [f6] (7).

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

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

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

(iv) A claimant, estate, or trust may not carry forward or carry back a tax credit under this Subsection (3) ~~[may not be carried forward or carried back]~~.

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

(c) (i) Subject to Subsections (3)(c)(ii) and (iii), a claimant, estate, or trust that is a lessee of a commercial energy system installed on a commercial unit may claim a tax credit under this Subsection (3) if the claimant, estate, or trust ~~[confirms that the lessor irrevocably elects not to claim the tax credit]~~ obtains a written certification from the office in accordance with Subsection (7).

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

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

(4) (a) Subject to the other provisions of this Subsection (4), a claimant, estate, or trust may claim a refundable tax credit under this Subsection (4) with respect to a commercial

energy system if:

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

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

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

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

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

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

(A) 0.35 cents; and

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

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

(iii) A claimant, estate, or trust may not carry forward or carry back a tax credit under this Subsection (4) ~~[may not be carried forward or back]~~.

(c) A claimant, estate, or trust that is a lessee of a commercial energy system installed on a commercial unit may claim a tax credit under this Subsection (4) if the claimant, estate, or trust ~~[confirms that the lessor irrevocably elects not to claim the tax credit]~~ obtains a written certification from the office in accordance with Subsection (7).

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

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

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

(B) the claimant, estate, or trust sells all or part of the energy produced by the

commercial energy system as a commercial enterprise;

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

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

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

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

(A) 0.35 cents; and

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

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

(iii) A claimant, estate, or trust may not carry forward or carry back a tax credit under this Subsection (5) ~~[may not be carried forward or carried back]~~.

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

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

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

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

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

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

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

(v) the claimant, estate, or trust obtains a written certification from the office in

462 accordance with Subsection (7).

463 (b) (i) Subject to Subsections (6)(b)(ii) and (iii), a tax credit under this Subsection (6)
464 is equal to the product of:

465 (A) 12 cents; and

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

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

471 (iii) A claimant, estate, or trust may not carry forward or carry back a tax credit under
472 this Subsection (6).

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

476 [~~(6)~~] (7) (a) Before a claimant, estate, or trust, including a lessee under Subsections (3)
477 through (6), may claim a tax credit under this section, the claimant, estate, or trust shall obtain
478 a written certification from the office.

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

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

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

485 (A) has been completely installed;

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

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

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

492 (i) a copy of the lessor's written certification or other proof, in a form established by the

office, that the lessor qualified for a tax credit under Subsection (3), (4), (5), or (6); and

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

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

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

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

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

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

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

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

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

63M-4-602. Definitions.

As used in this part:

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

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

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

(a) (i) that expands or creates new industrial, mining, manufacturing, or agriculture

activity in the state, not including a retail business;

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

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

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

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

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

(ii) \$10,000,000.

(4) "Infrastructure" means:

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

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

(c) a fuel standard compliance project;

(d) a road improvement project;

(e) a water self-supply project;

(f) a water removal system project;

(g) a solution-mined subsurface salt cavern; [or]

(h) a project that is designed to:

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

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

(i) a hydrogen fuel production or distribution project.

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

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

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

555 cost infrastructure project, under:

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

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

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

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

560 (8) "Tax credit" means a tax credit under Section 59-7-619 or 59-10-1034.

561 (9) "Tax credit certificate" means a certificate issued by the office to an infrastructure

562 cost-burdened entity that:

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

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

565 (c) lists, for a taxable year, the amount of the tax credit authorized for the infrastructure

566 cost-burdened entity under this part; and

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

568 Section 4. **Retrospective operation.**

569 This bill has retrospective operation for a taxable year beginning on or after January 1,

570 2020.