

STATE COMMISSION AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Gregory H. Hughes

LONG TITLE

General Description:

This bill modifies provisions relating to certain state commissions.

Highlighted Provisions:

This bill:

- ▶ modifies the duties of the Utah Tax Review Commission;
- ▶ transfers some duties of the Utah Tax Review Commission to the Revenue and Taxation Interim Committee;
- ▶ modifies the duties of the Utah Constitutional Revision Commission;
- ▶ modifies a provision relating to the staffing of the Utah Constitutional Revision Commission; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-1-903, as last amended by Laws of Utah 2002, Chapter 144

59-1-904, as enacted by Laws of Utah 1990, Chapter 237

59-1-905, as last amended by Laws of Utah 2010, Chapter 286



- 28 **59-5-102**, as last amended by Laws of Utah 2010, Chapter 323
- 29 **59-7-612**, as last amended by Laws of Utah 2008, Chapters 4 and 382
- 30 **59-7-613**, as last amended by Laws of Utah 2008, Chapters 4 and 382
- 31 **59-7-614**, as last amended by Laws of Utah 2009, Chapter 344
- 32 **59-7-614.2**, as last amended by Laws of Utah 2010, Chapter 164
- 33 **59-7-614.3**, as enacted by Laws of Utah 2008, Chapter 389
- 34 **59-7-614.5**, as last amended by Laws of Utah 2010, Chapter 278
- 35 **59-10-1012**, as last amended by Laws of Utah 2008, Chapters 4 and 382
- 36 **59-10-1013**, as last amended by Laws of Utah 2008, Chapters 4 and 382
- 37 **59-10-1014**, as last amended by Laws of Utah 2009, Chapter 344
- 38 **59-10-1024**, as enacted by Laws of Utah 2008, Chapter 389
- 39 **59-10-1106**, as last amended by Laws of Utah 2009, Chapter 344
- 40 **59-10-1107**, as last amended by Laws of Utah 2010, Chapter 164
- 41 **59-10-1108**, as last amended by Laws of Utah 2010, Chapter 278
- 42 **59-12-103.1**, as last amended by Laws of Utah 2006, Chapter 253
- 43 **59-12-104.5**, as last amended by Laws of Utah 2009, Chapter 203
- 44 **63I-3-203**, as last amended by Laws of Utah 2010, Chapter 25
- 45 **63I-3-204**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 46 **63I-3-207**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 47 **63J-1-205**, as enacted by Laws of Utah 2008, Chapter 138
- 48 **63M-1-1805**, as last amended by Laws of Utah 2009, Chapter 135
- 49 **63M-1-2406**, as enacted by Laws of Utah 2008, Chapter 372
- 50 **63M-1-2806**, as last amended by Laws of Utah 2010, Chapter 45



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

53 Section 1. Section **59-1-903** is amended to read:

54 **59-1-903. Duties.**

55 [~~(+)~~] The review commission shall [~~:(a) establish an ongoing and comprehensive~~

56 ~~review of: (i) the tax laws of this state and the political subdivisions of this state; and (ii) all~~

57 ~~issues related to revenue and taxation; and (b)] make recommendations to the governor and the~~

58 ~~Legislature on[~~:(+)~~] specific tax issues[~~;~~and], as requested by:~~

59 ~~[(ii) tax policy of the state and the political subdivisions.]~~

60 ~~[(2) The review commission may advise the governor, the Legislature, and political~~
61 ~~subdivisions on any proposed change of tax laws or tax policy.]~~

62 (1) the Legislature in a joint resolution of the Legislature; or

63 (2) the Legislative Management Committee.

64 Section 2. Section **59-1-904** is amended to read:

65 **59-1-904. Public hearings.**

66 The review commission may hold public hearings it considers advisable and in various
67 locations within the state so that all interested persons who are citizens of this state may be
68 afforded an opportunity to appear and present their views in respect to any subject relating to
69 the work of the review commission under Section 59-1-903.

70 Section 3. Section **59-1-905** is amended to read:

71 **59-1-905. Per diem and travel expenses.**

72 ~~[(+)]~~ A member may not receive compensation or benefits for the member's service,
73 but may receive per diem and travel expenses in accordance with:

74 ~~[(a)]~~ (1) Section 63A-3-106;

75 ~~[(b)]~~ (2) Section 63A-3-107; and

76 ~~[(c)]~~ (3) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
77 63A-3-107.

78 ~~[(2) Prior to the convening of the Legislature in annual general session, the review~~
79 ~~commission shall submit its recommendations to the members of the Legislature and to the~~
80 ~~governor.]~~

81 Section 4. Section **59-5-102** is amended to read:

82 **59-5-102. Severance tax -- Rate -- Computation -- Annual exemption -- Tax credit**
83 **-- Tax rate reduction -- Study by Revenue and Taxation Interim Committee.**

84 (1) Each person owning an interest, working interest, royalty interest, payments out of
85 production, or any other interest, in oil or gas produced from a well in the state, or in the
86 proceeds of the production, shall pay to the state a severance tax on the basis of the value
87 determined under Section 59-5-103.1 of the oil or gas:

88 (a) produced; and

89 (b) (i) saved;

90 (ii) sold; or
91 (iii) transported from the field where the substance was produced.
92 (2) (a) Subject to Subsection (2)(d), the severance tax rate for oil is as follows:
93 (i) 3% of the value of the oil up to and including the first \$13 per barrel for oil; and
94 (ii) 5% of the value of the oil from \$13.01 and above per barrel for oil.
95 (b) Subject to Subsection (2)(d), the severance tax rate for natural gas is as follows:
96 (i) 3% of the value of the natural gas up to and including the first \$1.50 per MCF for
97 gas; and
98 (ii) 5% of the value of the natural gas from \$1.51 and above per MCF for gas.
99 (c) Subject to Subsection (2)(d), the severance tax rate for natural gas liquids is 4% of
100 the value of the natural gas liquids.
101 (d) (i) On or before December 15, 2004, the Office of the Legislative Fiscal Analyst
102 and the Governor's Office of Planning and Budget shall prepare a revenue forecast estimating
103 the amount of revenues that:
104 (A) would be generated by the taxes imposed by this part for the calendar year
105 beginning on January 1, 2004 had 2004 General Session S.B. 191 not taken effect; and
106 (B) will be generated by the taxes imposed by this part for the calendar year beginning
107 on January 1, 2004.
108 (ii) Effective on January 1, 2005, the tax rates described in Subsections (2)(a) through
109 (c) shall be:
110 (A) increased as provided in Subsection (2)(d)(iii) if the amount of revenues estimated
111 under Subsection (2)(d)(i)(B) is less than the amount of revenues estimated under Subsection
112 (2)(d)(i)(A); or
113 (B) decreased as provided in Subsection (2)(d)(iii) if the amount of revenues estimated
114 under Subsection (2)(d)(i)(B) is greater than the amount of revenues estimated under
115 Subsection (2)(d)(i)(A).
116 (iii) For purposes of Subsection (2)(d)(ii):
117 (A) subject to Subsection (2)(d)(iv)(B):
118 (I) if an increase is required under Subsection (2)(d)(ii)(A), the total increase in the tax
119 rates shall be by the amount necessary to generate for the calendar year beginning on January 1,
120 2005 revenues equal to the amount by which the revenues estimated under Subsection

- 121 (2)(d)(i)(A) exceed the revenues estimated under Subsection (2)(d)(i)(B); or
- 122 (II) if a decrease is required under Subsection (2)(d)(ii)(B), the total decrease in the tax
123 rates shall be by the amount necessary to reduce for the calendar year beginning on January 1,
124 2005 revenues equal to the amount by which the revenues estimated under Subsection
125 (2)(d)(i)(B) exceed the revenues estimated under Subsection (2)(d)(i)(A); and
- 126 (B) an increase or decrease in each tax rate under Subsection (2)(d)(ii) shall be in
127 proportion to the amount of revenues generated by each tax rate under this part for the calendar
128 year beginning on January 1, 2003.
- 129 (iv) (A) The commission shall calculate any tax rate increase or decrease required by
130 Subsection (2)(d)(ii) using the best information available to the commission.
- 131 (B) If the tax rates described in Subsections (2)(a) through (c) are increased or
132 decreased as provided in this Subsection (2)(d), the commission shall mail a notice to each
133 person required to file a return under this part stating the tax rate in effect on January 1, 2005
134 as a result of the increase or decrease.
- 135 (3) If oil or gas is shipped outside the state:
- 136 (a) the shipment constitutes a sale; and
137 (b) the oil or gas is subject to the tax imposed by this section.
- 138 (4) (a) Except as provided in Subsection (4)(b), if the oil or gas is stockpiled, the tax is
139 not imposed until the oil or gas is:
- 140 (i) sold;
141 (ii) transported; or
142 (iii) delivered.
- 143 (b) Notwithstanding Subsection (4)(a), if oil or gas is stockpiled for more than two
144 years, the oil or gas is subject to the tax imposed by this section.
- 145 (5) A tax is not imposed under this section upon:
- 146 (a) stripper wells, unless the exemption prevents the severance tax from being treated
147 as a deduction for federal tax purposes;
148 (b) the first 12 months of production for wildcat wells started after January 1, 1990; or
149 (c) the first six months of production for development wells started after January 1,
150 1990.
- 151 (6) (a) Subject to Subsections (6)(b) and (c), a working interest owner who pays for all

152 or part of the expenses of a recompletion or workover may claim a nonrefundable tax credit
153 equal to 20% of the amount paid.

154 (b) The tax credit under Subsection (6)(a) for each recompletion or workover may not
155 exceed \$30,000 per well during each calendar year.

156 (c) If any amount of tax credit a taxpayer is allowed under this Subsection (6) exceeds
157 the taxpayer's tax liability under this part for the calendar year for which the taxpayer claims
158 the tax credit, the amount of tax credit exceeding the taxpayer's tax liability for the calendar
159 year may be carried forward for the next three calendar years.

160 (7) A 50% reduction in the tax rate is imposed upon the incremental production
161 achieved from an enhanced recovery project.

162 (8) The taxes imposed by this section are:

163 (a) in addition to all other taxes provided by law; and

164 (b) delinquent, unless otherwise deferred, on June 1 next succeeding the calendar year
165 when the oil or gas is:

166 (i) produced; and

167 (ii) (A) saved;

168 (B) sold; or

169 (C) transported from the field.

170 (9) With respect to the tax imposed by this section on each owner of oil or gas or in the
171 proceeds of the production of those substances produced in the state, each owner is liable for
172 the tax in proportion to the owner's interest in the production or in the proceeds of the
173 production.

174 (10) The tax imposed by this section shall be reported and paid by each producer that
175 takes oil or gas in kind pursuant to agreement on behalf of the producer and on behalf of each
176 owner entitled to participate in the oil or gas sold by the producer or transported by the
177 producer from the field where the oil or gas is produced.

178 (11) Each producer shall deduct the tax imposed by this section from the amounts due
179 to other owners for the production or the proceeds of the production.

180 (12) (a) The [~~Tax Review Commission~~] Revenue and Taxation Interim Committee
181 shall review the applicability of the tax provided for in this chapter to coal-to-liquids, oil shale,
182 and tar sands technology on or before the October 2011 interim meeting.

183 (b) The [~~Tax Review Commission~~] Revenue and Taxation Interim Committee shall
184 address in its review the cost and benefit of not applying the tax provided for in this chapter to
185 coal-to-liquids, oil shale, and tar sands technology.

186 (c) The [~~Tax Review Commission~~] Revenue and Taxation Interim Committee shall
187 report its findings and recommendations under this Subsection (12) to the [~~Revenue and~~
188 ~~Taxation Interim~~] Legislative Management Committee on or before the November 2011
189 interim meeting.

190 Section 5. Section **59-7-612** is amended to read:

191 **59-7-612. Tax credits for research activities conducted in the state -- Carry**
192 **forward -- Commission to report modification or repeal of certain federal provisions --**
193 **Revenue and Taxation Interim Committee study.**

194 (1) (a) A taxpayer meeting the requirements of this section may claim the following
195 nonrefundable tax credits:

196 (i) a research tax credit of 5% of the taxpayer's qualified research expenses for the
197 current taxable year that exceed the base amount provided for under Subsection (4);

198 (ii) a tax credit for a payment to a qualified organization for basic research as provided
199 in Section 41(e), Internal Revenue Code, of 5% for the current taxable year that exceed the
200 base amount provided for under Subsection (4); and

201 (iii) a tax credit equal to:

202 (A) for the taxable year beginning on or after January 1, 2008, but beginning on or
203 before December 31, 2008, 5% of the taxpayer's qualified research expenses for the current
204 taxable year;

205 (B) for the taxable year beginning on or after January 1, 2009, but beginning on or
206 before December 31, 2009, 6.3% of the taxpayer's qualified research expenses for the current
207 taxable year; or

208 (C) for taxable years beginning on or after January 1, 2010, 9.2% of the taxpayer's
209 qualified research expenses for the current taxable year.

210 (b) Subject to Subsection (5), a taxpayer may claim a tax credit under:

211 (i) Subsection (1)(a)(i) or (1)(a)(iii), for the taxable year for which the taxpayer incurs
212 the qualified research expenses; or

213 (ii) Subsection (1)(a)(ii), for the taxable year for which the taxpayer makes the payment

214 to the qualified organization.

215 (c) The tax credits provided for in this section do not include the alternative
216 incremental credit provided for in Section 41(c)(4), Internal Revenue Code.

217 (2) For purposes of claiming a tax credit under this section, a unitary group as defined
218 in Section 59-7-101 is considered to be one taxpayer.

219 (3) Except as specifically provided for in this section:

220 (a) the tax credits authorized under Subsection (1) shall be calculated as provided in
221 Section 41, Internal Revenue Code; and

222 (b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating
223 the tax credits authorized under Subsection (1).

224 (4) For purposes of this section:

225 (a) the base amount shall be calculated as provided in Sections 41(c) and 41(h),
226 Internal Revenue Code, except that:

227 (i) the base amount does not include the calculation of the alternative incremental
228 credit provided for in Section 41(c)(4), Internal Revenue Code;

229 (ii) a taxpayer's gross receipts include only those gross receipts attributable to sources
230 within this state as provided in Part 3, Allocation and Apportionment of Income -- Utah
231 UDITPA Provisions; and

232 (iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating
233 the base amount, a taxpayer:

234 (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B)
235 regardless of whether the taxpayer meets the requirements of Section 41(c)(3)(B)(i)(I) or (II);
236 and

237 (B) may not revoke an election to be treated as a start-up company under Subsection
238 (4)(a)(iii)(A);

239 (b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except
240 that the term includes only basic research conducted in this state;

241 (c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except
242 that the term includes only qualified research conducted in this state;

243 (d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal
244 Revenue Code, except that the term includes only:

245 (i) in-house research expenses incurred in this state; and
246 (ii) contract research expenses incurred in this state; and
247 (e) a tax credit provided for in this section is not terminated if a credit terminates under
248 Section 41, Internal Revenue Code.

249 (5) (a) If the amount of a tax credit claimed by a taxpayer under Subsection (1)(a)(i) or
250 (ii) exceeds the taxpayer's tax liability under this chapter for a taxable year, the amount of the
251 tax credit exceeding the tax liability:

252 (i) may be carried forward for a period that does not exceed the next 14 taxable years;

253 and

254 (ii) may not be carried back to a taxable year preceding the current taxable year.

255 (b) A taxpayer may not carry forward the tax credit allowed by Subsection (1)(a)(iii).

256 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
257 commission may make rules for purposes of this section prescribing a certification process for
258 qualified organizations to ensure that amounts paid to the qualified organizations are for basic
259 research conducted in this state.

260 (7) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
261 commission shall report the modification or repeal to the [~~Utah Tax Review Commission~~]
262 Revenue and Taxation Interim Committee within 60 days after the day on which the
263 modification or repeal becomes effective.

264 (8) (a) The [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee
265 shall review the tax credits provided for in this section on or before October 1 of the year after
266 the year in which the commission reports under Subsection (7) a modification or repeal of a
267 provision of Section 41, Internal Revenue Code.

268 (b) Notwithstanding Subsection (8)(a), the [~~Utah Tax Review Commission~~] Revenue
269 and Taxation Interim Committee is not required to review the tax credits provided for in this
270 section if the only modification to a provision of Section 41, Internal Revenue Code, is the
271 extension of the termination date provided for in Section 41(h), Internal Revenue Code.

272 (c) The [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee
273 shall address in a review under this section:

274 (i) the cost of the tax credits provided for in this section;

275 (ii) the purpose and effectiveness of the tax credits provided for in this section;

- 276 (iii) whether the tax credits provided for in this section benefit the state; and
- 277 (iv) whether the tax credits provided for in this section should be:
- 278 (A) continued;
- 279 (B) modified; or
- 280 (C) repealed.
- 281 (d) If the [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee
- 282 reviews the tax credits provided for in this section, the [~~Utah Tax Review Commission~~]
- 283 committee shall report its findings to the [~~Revenue and Taxation Interim~~] Legislative
- 284 Management Committee on or before the November interim meeting of the year in which the
- 285 [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee reviews the tax
- 286 credits.

287 Section 6. Section **59-7-613** is amended to read:

288 **59-7-613. Tax credits for machinery, equipment, or both primarily used for**

289 **conducting qualified research or basic research -- Carry forward -- Commission to report**

290 **modification or repeal of certain federal provisions -- Revenue and Taxation Interim**

291 **Committee study.**

292 (1) As used in this section:

293 (a) "Basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except

294 that the term includes only basic research conducted in this state.

295 (b) "Equipment" includes:

- 296 (i) a computer;
- 297 (ii) computer equipment; and
- 298 (iii) computer software.

299 (c) "Purchase price":

- 300 (i) includes the cost of installing an item of machinery or equipment; and
- 301 (ii) does not include a tax imposed under Chapter 12, Sales and Use Tax Act, on an
- 302 item of machinery or equipment.

303 (d) "Qualified organization" is as defined in Section 41(e)(6), Internal Revenue Code.

304 (e) "Qualified research" is as defined in Section 41(d), Internal Revenue Code, except

305 that the term includes only qualified research conducted in this state.

306 (2) (a) Except as provided in Subsection (2)(c), for taxable years beginning on or after

307 January 1, 1999, but beginning before December 31, 2010, a taxpayer meeting the requirements
308 of this section may claim the following nonrefundable tax credits:

309 (i) a tax credit of 6% of the purchase price of machinery, equipment, or both:

310 (A) purchased by the taxpayer during the taxable year;

311 (B) that is subject to a tax under Chapter 12, Sales and Use Tax Act; and

312 (C) that is primarily used to conduct qualified research in this state; and

313 (ii) a tax credit of 6% of the purchase price of machinery, equipment, or both:

314 (A) purchased by the taxpayer during the taxable year;

315 (B) that is subject to a tax under Chapter 12, Sales and Use Tax Act;

316 (C) that is donated to a qualified organization; and

317 (D) that is primarily used to conduct basic research in this state.

318 (b) Subject to Subsection (5), a taxpayer may claim a tax credit under this section for
319 the taxable year for which the taxpayer purchases the machinery, equipment, or both.

320 (c) If a taxpayer qualifies for a tax credit under Subsection (2)(a) for a purchase of
321 machinery, equipment, or both, the taxpayer may not claim the tax credit or carry the tax credit
322 forward if the machinery, equipment, or both, is primarily used to conduct qualified research in
323 the state for a time period that is less than 12 consecutive months.

324 (3) For purposes of claiming a tax credit under this section, a unitary group as defined
325 in Section 59-7-101 is considered to be one taxpayer.

326 (4) Notwithstanding Section 41(h), Internal Revenue Code, a tax credit provided for in
327 this section is not terminated if a credit terminates under Section 41, Internal Revenue Code.

328 (5) If the amount of a tax credit claimed by a taxpayer under this section exceeds the
329 taxpayer's tax liability under this chapter for a taxable year, the amount of the tax credit
330 exceeding the tax liability:

331 (a) may be carried forward for a period that does not exceed the next 14 taxable years;
332 and

333 (b) may not be carried back to a taxable year preceding the current taxable year.

334 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
335 commission may make rules for purposes of this section prescribing a certification process for
336 qualified organizations to ensure that machinery, equipment, or both provided to the qualified
337 organization is to be primarily used to conduct basic research in this state.

338 (7) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
339 commission shall report the modification or repeal to the ~~[Utah Tax Review Commission]~~
340 Revenue and Taxation Interim Committee within 60 days after the day on which the
341 modification or repeal becomes effective.

342 (8) (a) The ~~[Utah Tax Review Commission]~~ Revenue and Taxation Interim Committee
343 shall review the tax credits provided for in this section on or before October 1 of the year after
344 the year in which the commission reports under Subsection (7) a modification or repeal of a
345 provision of Section 41, Internal Revenue Code.

346 (b) Notwithstanding Subsection (8)(a), the ~~[Utah Tax Review Commission]~~ Revenue
347 and Taxation Interim Committee is not required to review the tax credits provided for in this
348 section if the only modification to a provision of Section 41, Internal Revenue Code, is the
349 extension of the termination date provided for in Section 41(h), Internal Revenue Code.

350 (c) The ~~[Utah Tax Review Commission]~~ Revenue and Taxation Interim Committee
351 shall address in a review under this section the:

- 352 (i) cost of the tax credits provided for in this section;
- 353 (ii) purpose and effectiveness of the tax credits provided for in this section;
- 354 (iii) whether the tax credits provided for in this section benefit the state; and
- 355 (iv) whether the tax credits provided for in this section should be:
 - 356 (A) continued;
 - 357 (B) modified; or
 - 358 (C) repealed.

359 (d) If the ~~[Utah Tax Review Commission]~~ Revenue and Taxation Interim Committee
360 reviews the tax credits provided for in this section, the ~~[Utah Tax Review Commission]~~
361 committee shall report its findings to the ~~[Revenue and Taxation Interim]~~ Legislative
362 Management Committee on or before the November interim meeting of the year in which the
363 ~~[Utah Tax Review Commission]~~ Revenue and Taxation Interim Committee reviews the tax
364 credits.

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

366 **59-7-614. Renewable energy systems tax credit -- Definitions -- Limitations --**
367 **Certification -- Rulemaking authority.**

368 (1) As used in this section:

- 369 (a) "Active solar system":
- 370 (i) means a system of equipment capable of collecting and converting incident solar
- 371 radiation into thermal, mechanical, or electrical energy, and transferring these forms of energy
- 372 by a separate apparatus to storage or to the point of use; and
- 373 (ii) includes water heating, space heating or cooling, and electrical or mechanical
- 374 energy generation.
- 375 (b) "Biomass system" means any system of apparatus and equipment for use in
- 376 converting material into biomass energy, as defined in Section 59-12-102, and transporting that
- 377 energy by separate apparatus to the point of use or storage.
- 378 (c) "Business entity" means any sole proprietorship, estate, trust, partnership,
- 379 association, corporation, cooperative, or other entity under which business is conducted or
- 380 transacted.
- 381 (d) "Commercial energy system" means any active solar, passive solar, geothermal
- 382 electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or
- 383 biomass system used to supply energy to a commercial unit or as a commercial enterprise.
- 384 (e) "Commercial enterprise" means a business entity whose purpose is to produce
- 385 electrical, mechanical, or thermal energy for sale from a commercial energy system.
- 386 (f) (i) "Commercial unit" means any building or structure that a business entity uses to
- 387 transact its business.
- 388 (ii) Notwithstanding Subsection (1)(f)(i):
- 389 (A) in the case of an active solar system used for agricultural water pumping or a wind
- 390 system, each individual energy generating device shall be a commercial unit; and
- 391 (B) if an energy system is the building or structure that a business entity uses to
- 392 transact its business, a commercial unit is the complete energy system itself.
- 393 (g) "Direct-use geothermal system" means a system of apparatus and equipment
- 394 enabling the direct use of thermal energy, generally between 100 and 300 degrees Fahrenheit,
- 395 that is contained in the earth to meet energy needs, including heating a building, an industrial
- 396 process, and aquaculture.
- 397 (h) "Geothermal electricity" means energy contained in heat that continuously flows
- 398 outward from the earth that is used as a sole source of energy to produce electricity.
- 399 (i) "Geothermal heat-pump system" means a system of apparatus and equipment

400 enabling the use of thermal properties contained in the earth at temperatures well below 100
401 degrees Fahrenheit to help meet heating and cooling needs of a structure.

402 (j) "Hydroenergy system" means a system of apparatus and equipment capable of
403 intercepting and converting kinetic water energy into electrical or mechanical energy and
404 transferring this form of energy by separate apparatus to the point of use or storage.

405 (k) "Individual taxpayer" means any person who is a taxpayer as defined in Section
406 59-10-103 and an individual as defined in Section 59-10-103.

407 (l) "Passive solar system":

408 (i) means a direct thermal system that utilizes the structure of a building and its
409 operable components to provide for collection, storage, and distribution of heating or cooling
410 during the appropriate times of the year by utilizing the climate resources available at the site;
411 and

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

414 (m) "Residential energy system" means any active solar, passive solar, biomass,
415 direct-use geothermal, geothermal heat-pump system, wind, or hydroenergy system used to
416 supply energy to or for any residential unit.

417 (n) "Residential unit" means any house, condominium, apartment, or similar dwelling
418 unit that serves as a dwelling for a person, group of persons, or a family but does not include
419 property subject to a fee under:

420 (i) Section 59-2-404;

421 (ii) Section 59-2-405;

422 (iii) Section 59-2-405.1;

423 (iv) Section 59-2-405.2; or

424 (v) Section 59-2-405.3.

425 (o) "Utah Geological Survey" means the Utah Geological Survey established in Section
426 79-3-201.

427 (p) "Wind system" means a system of apparatus and equipment capable of intercepting
428 and converting wind energy into mechanical or electrical energy and transferring these forms of
429 energy by a separate apparatus to the point of use, sale, or storage.

430 (2) (a) (i) For taxable years beginning on or after January 1, 2007, a business entity that

431 purchases and completes or participates in the financing of a residential energy system to
432 supply all or part of the energy required for a residential unit owned or used by the business
433 entity and situated in Utah is entitled to a nonrefundable tax credit as provided in this
434 Subsection (2)(a).

435 (ii) (A) A business entity is entitled to a tax credit equal to 25% of the reasonable costs
436 of each residential energy system installed with respect to each residential unit it owns or uses,
437 including installation costs, against any tax due under this chapter for the taxable year in which
438 the energy system is completed and placed in service.

439 (B) The total amount of each credit under this Subsection (2)(a) may not exceed \$2,000
440 per residential unit.

441 (C) The credit under this Subsection (2)(a) is allowed for any residential energy system
442 completed and placed in service on or after January 1, 2007.

443 (iii) If a business entity sells a residential unit to an individual taxpayer before making
444 a claim for the tax credit under this Subsection (2)(a), the business entity may:

445 (A) assign its right to this tax credit to the individual taxpayer; and

446 (B) if the business entity assigns its right to the tax credit to an individual taxpayer
447 under Subsection (2)(a)(iii)(A), the individual taxpayer may claim the tax credit as if the
448 individual taxpayer had completed or participated in the costs of the residential energy system
449 under Section 59-10-1014.

450 (b) (i) For taxable years beginning on or after January 1, 2007, a business entity that
451 purchases or participates in the financing of a commercial energy system situated in Utah is
452 entitled to a refundable tax credit as provided in this Subsection (2)(b) if the commercial
453 energy system does not use wind, geothermal electricity, or biomass equipment capable of
454 producing a total of 660 or more kilowatts of electricity, and:

455 (A) the commercial energy system supplies all or part of the energy required by
456 commercial units owned or used by the business entity; or

457 (B) the business entity sells all or part of the energy produced by the commercial
458 energy system as a commercial enterprise.

459 (ii) (A) A business entity is entitled to a tax credit of up to 10% of the reasonable costs
460 of any commercial energy system installed, including installation costs, against any tax due
461 under this chapter for the taxable year in which the commercial energy system is completed and

462 placed in service.

463 (B) Notwithstanding Subsection (2)(b)(ii)(A), the total amount of the credit under this
464 Subsection (2)(b) may not exceed \$50,000 per commercial unit.

465 (C) The credit under this Subsection (2)(b) is allowed for any commercial energy
466 system completed and placed in service on or after January 1, 2007.

467 (iii) A business entity that leases a commercial energy system installed on a
468 commercial unit is eligible for the tax credit under this Subsection (2)(b) if the lessee can
469 confirm that the lessor irrevocably elects not to claim the credit.

470 (iv) Only the principal recovery portion of the lease payments, which is the cost
471 incurred by a business entity in acquiring a commercial energy system, excluding interest
472 charges and maintenance expenses, is eligible for the tax credit under this Subsection (2)(b).

473 (v) A business entity that leases a commercial energy system is eligible to use the tax
474 credit under this Subsection (2)(b) for a period no greater than seven years from the initiation
475 of the lease.

476 (vi) A tax credit allowed by this Subsection (2)(b) may not be carried forward or
477 carried back.

478 (c) (i) For taxable years beginning on or after January 1, 2007, a business entity that
479 owns a commercial energy system situated in Utah using wind, geothermal electricity, or
480 biomass equipment capable of producing a total of 660 or more kilowatts of electricity is
481 entitled to a refundable tax credit as provided in this Subsection (2)(c) if:

482 (A) the commercial energy system supplies all or part of the energy required by
483 commercial units owned or used by the business entity; or

484 (B) the business entity sells all or part of the energy produced by the commercial
485 energy system as a commercial enterprise.

486 (ii) (A) A business entity is entitled to a tax credit under this section equal to the
487 product of:

488 (I) 0.35 cents; and

489 (II) the kilowatt hours of electricity produced and either used or sold during the taxable
490 year.

491 (B) (I) The credit calculated under Subsection (2)(c)(ii)(A) may be claimed for
492 production occurring during a period of 48 months beginning with the month in which the

493 commercial energy system is placed in commercial service.

494 (II) The credit allowed by this Subsection (2)(c) for each year may not be carried
495 forward or carried back.

496 (C) The credit under this Subsection (2)(c) is allowed for any commercial energy
497 system completed and placed in service on or after January 1, 2007.

498 (iii) A business entity that leases a commercial energy system installed on a
499 commercial unit is eligible for the tax credit under this Subsection (2)(c) if the lessee can
500 confirm that the lessor irrevocably elects not to claim the credit.

501 (d) (i) A tax credit under Subsection (2)(a) or (b) may be claimed for the taxable year
502 in which the energy system is completed and placed in service.

503 (ii) Additional energy systems or parts of energy systems may be claimed for
504 subsequent years.

505 (iii) If the amount of a tax credit under Subsection (2)(a) exceeds a business entity's tax
506 liability under this chapter for a taxable year, the amount of the credit exceeding the liability
507 may be carried forward for a period which does not exceed the next four taxable years.

508 (3) (a) Except as provided in Subsection (3)(b), the tax credits provided for under
509 Subsection (2) are in addition to any tax credits provided under the laws or rules and
510 regulations of the United States.

511 (b) A purchaser of one or more solar units that claims a tax credit under Section
512 59-7-614.3 for the purchase of the one or more solar units may not claim a tax credit under this
513 section for that purchase.

514 (c) (i) The Utah Geological Survey may set standards for residential and commercial
515 energy systems claiming a credit under Subsections (2)(a) and (b) that cover the safety,
516 reliability, efficiency, leasing, and technical feasibility of the systems to ensure that the systems
517 eligible for the tax credit use the state's renewable and nonrenewable energy resources in an
518 appropriate and economic manner.

519 (ii) The Utah Geological Survey may set standards for residential and commercial
520 energy systems that establish the reasonable costs of an energy system, as used in Subsections
521 (2)(a)(ii)(A) and (2)(b)(ii)(A), as an amount per unit of energy production.

522 (iii) A tax credit may not be taken under Subsection (2) until the Utah Geological
523 Survey has certified that the energy system has been completely installed and is a viable system

524 for saving or production of energy from renewable resources.

525 (d) The Utah Geological Survey and the commission may make rules in accordance
526 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are necessary to
527 implement this section.

528 (4) (a) On or before October 1, 2012, and every five years thereafter, the [~~Utah Tax~~
529 ~~Review Commission~~] Revenue and Taxation Interim Committee shall review each tax credit
530 provided by this section and [~~make~~] report its recommendations to the [~~Revenue and Taxation~~
531 ~~Interim~~] Legislative Management Committee concerning whether the credit should be
532 continued, modified, or repealed.

533 (b) The [~~Utah Tax Review Commission's~~] Revenue and Taxation Interim Committee's
534 report under Subsection (4)(a) shall include information concerning the cost of the credit, the
535 purpose and effectiveness of the credit, and the state's benefit from the credit.

536 Section 8. Section **59-7-614.2** is amended to read:

537 **59-7-614.2. Refundable economic development tax credit.**

538 (1) As used in this section:

539 (a) "Business entity" means a taxpayer that meets the definition of "business entity" as
540 defined in Section 63M-1-2403 or 63M-1-2803.

541 (b) "Community development and renewal agency" is as defined in Section 17C-1-102.

542 (c) "Local government entity" is as defined in Section 63M-1-2403.

543 (d) "Office" means the Governor's Office of Economic Development.

544 (2) Subject to the other provisions of this section, a business entity, local government
545 entity, or community development and renewal agency may claim a refundable tax credit for
546 economic development.

547 (3) The tax credit under this section is the amount listed as the tax credit amount on the
548 tax credit certificate that the office issues to the business entity, local government entity, or
549 community development and renewal agency for the taxable year.

550 (4) A community development and renewal agency may claim a tax credit under this
551 section only if a local government entity assigns the tax credit to the community development
552 and renewal agency in accordance with Section 63M-1-2404.

553 (5) (a) In accordance with any rules prescribed by the commission under Subsection
554 (5)(b), the commission shall make a refund to the following that claim a tax credit under this

555 section:

556 (i) a local government entity;

557 (ii) a community development and renewal agency; or

558 (iii) a business entity if the amount of the tax credit exceeds the business entity's tax
559 liability for a taxable year.

560 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
561 commission may make rules providing procedures for making a refund to a business entity,
562 local government entity, or community development and renewal agency as required by
563 Subsection (5)(a).

564 (6) (a) On or before October 1, 2013, and every five years after October 1, 2013, the
565 ~~[Utah Tax Review Commission]~~ Revenue and Taxation Interim Committee shall study the tax
566 credit allowed by this section and make recommendations to the ~~[Revenue and Taxation~~
567 ~~Interim]~~ Legislative Management Committee and the Workforce Services and Community and
568 Economic Development Interim Committee concerning whether the tax credit should be
569 continued, modified, or repealed.

570 (b) For purposes of the study required by this Subsection (6), the office shall provide
571 the following information to the ~~[Utah Tax Review Commission]~~ Revenue and Taxation
572 Interim Committee:

573 (i) the amount of tax credit that the office grants to each business entity, local
574 government entity, or community development and renewal agency for each calendar year;

575 (ii) the criteria that the office uses in granting a tax credit;

576 (iii) (A) for a business entity, the new state revenues generated by the business entity
577 for the calendar year; or

578 (B) for a local government entity, regardless of whether the local government entity
579 assigns the tax credit in accordance with Section 63M-1-2404, the new state revenues
580 generated as a result of a new commercial project within the local government entity for each
581 calendar year;

582 (iv) the information contained in the office's latest report to the Legislature under
583 Section 63M-1-2406 or 63M-1-2806; and

584 (v) any other information that the ~~[Utah Tax Review Commission]~~ Revenue and
585 Taxation Interim Committee requests.

586 (c) The [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee
587 shall ensure that its recommendations under Subsection (6)(a) include an evaluation of:

- 588 (i) the cost of the tax credit to the state;
- 589 (ii) the purpose and effectiveness of the tax credit; and
- 590 (iii) the extent to which the state benefits from the tax credit.

591 Section 9. Section **59-7-614.3** is amended to read:

592 **59-7-614.3. Nonrefundable tax credit for qualifying solar projects.**

593 (1) As used in this section:

594 (a) "Active solar system" is as defined in Section 59-7-614.

595 (b) "Purchaser" means a taxpayer that purchases one or more solar units from a
596 qualifying political subdivision.

597 (c) "Qualifying political subdivision" means:

598 (i) a city or town in this state;

599 (ii) an interlocal entity created under Title 11, Chapter 13, Interlocal Cooperation Act;

600 or

601 (iii) a special service district created under Title 17D, Chapter 1, Special Service
602 District Act.

603 (d) "Qualifying solar project" means the portion of an active solar system:

604 (i) that a qualifying political subdivision:

605 (A) constructs;

606 (B) controls; or

607 (C) owns;

608 (ii) with respect to which the qualifying political subdivision described in Subsection

609 (1)(c)(i) sells one or more solar units; and

610 (iii) that generates electrical output that is furnished:

611 (A) to one or more residential units; or

612 (B) for the benefit of one or more residential units.

613 (e) "Residential unit" is as defined in Section 59-7-614.

614 (f) "Solar unit" means a portion of the electrical output:

615 (i) of a qualifying solar project;

616 (ii) that a qualifying political subdivision sells to a purchaser; and

617 (iii) the purchase of which requires that the purchaser agree to bear a proportionate
618 share of the expense of the qualifying solar project:

619 (A) in accordance with a written agreement between the purchaser and the qualifying
620 political subdivision;

621 (B) in exchange for a credit on the purchaser's electrical bill; and

622 (C) as determined by a formula established by the qualifying political subdivision.

623 (2) Subject to Subsection (3), for taxable years beginning on or after January 1, 2008, a
624 purchaser may claim a nonrefundable tax credit equal to the product of:

625 (a) the amount the purchaser pays to purchase one or more solar units during the
626 taxable year; and

627 (b) 25%.

628 (3) For a taxable year, a tax credit under this section may not exceed \$2,000 on a
629 return.

630 (4) A purchaser may carry forward a tax credit under this section for a period that does
631 not exceed the next four taxable years if:

632 (a) the purchaser is allowed to claim a tax credit under this section for a taxable year;
633 and

634 (b) the amount of the tax credit exceeds the purchaser's tax liability under this chapter
635 for that taxable year.

636 (5) Subject to Section 59-7-614, a tax credit under this section is in addition to any
637 other tax credit allowed by this chapter.

638 (6) (a) On or before October 1, 2012, and every five years after October 1, 2012, the
639 [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee shall review the tax
640 credit allowed by this section and [~~make~~] report its recommendations to the [~~Revenue and~~
641 ~~Taxation Interim~~] Legislative Management Committee concerning whether the tax credit
642 should be continued, modified, or repealed.

643 (b) The [~~Utah Tax Review Commission's~~] Revenue and Taxation Interim Committee's
644 report under Subsection (6)(a) shall include information concerning the cost of the tax credit,
645 the purpose and effectiveness of the tax credit, and the state's benefit from the tax credit.

646 Section 10. Section **59-7-614.5** is amended to read:

647 **59-7-614.5. Refundable motion picture tax credit.**

648 (1) As used in this section:

649 (a) "Motion picture company" means a taxpayer that meets the definition of a motion
650 picture company under Section 63M-1-1802.

651 (b) "Office" means the Governor's Office of Economic Development.

652 (c) "State-approved production" has the same meaning as defined in Subsection
653 63M-1-1802(10).

654 (2) For taxable years beginning on or after January 1, 2009, a motion picture company
655 may claim a refundable tax credit for a state-approved production.

656 (3) The tax credit under this section is the amount listed as the tax credit amount on the
657 tax credit certificate that the office issues to a motion picture company under Section
658 63M-1-1803 for the taxable year.

659 (4) (a) In accordance with any rules prescribed by the commission under Subsection
660 (4)(b), the commission shall make a refund to a motion picture company that claims a tax
661 credit under this section if the amount of the tax credit exceeds the motion picture company's
662 tax liability for a taxable year.

663 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
664 commission may make rules providing procedures for making a refund to a motion picture
665 company as required by Subsection (4)(a).

666 (5) (a) On or before October 1, 2014, and every five years after October 1, 2014, the
667 [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee shall study the tax
668 credit allowed by this section and make recommendations to the [~~Revenue and Taxation~~
669 ~~Interim~~] Legislative Management Committee and the Workforce Services and Community and
670 Economic Development Interim Committee concerning whether the tax credit should be
671 continued, modified, or repealed.

672 (b) For purposes of the study required by this Subsection (5), the office shall provide
673 the following information to the [~~Utah Tax Review Commission~~] Revenue and Taxation
674 Interim Committee:

675 (i) the amount of tax credit that the office grants to each motion picture company for
676 each calendar year;

677 (ii) the criteria that the office uses in granting the tax credit;

678 (iii) the dollars left in the state, as defined in Subsection 63M-1-1802(2), by each

679 motion picture company for each calendar year;

680 (iv) the information contained in the office's latest report to the Legislature under
681 Section 63M-1-1805; and

682 (v) any other information requested by the [~~Utah Tax Review Commission~~] Revenue
683 and Taxation Interim Committee.

684 (c) The [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee
685 shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:

686 (i) the cost of the tax credit to the state;

687 (ii) the effectiveness of the tax credit; and

688 (iii) the extent to which the state benefits from the tax credit.

689 Section 11. Section **59-10-1012** is amended to read:

690 **59-10-1012. Tax credits for research activities conducted in the state -- Carry**
691 **forward -- Commission to report modification or repeal of certain federal provisions --**
692 **Revenue and Taxation Interim Committee study.**

693 (1) (a) A claimant, estate, or trust meeting the requirements of this section may claim
694 the following nonrefundable tax credits:

695 (i) a research tax credit of 5% of the claimant's, estate's, or trust's qualified research
696 expenses for the current taxable year that exceed the base amount provided for under
697 Subsection (3);

698 (ii) a tax credit for a payment to a qualified organization for basic research as provided
699 in Section 41(e), Internal Revenue Code of 5% for the current taxable year that exceed the base
700 amount provided for under Subsection (3); and

701 (iii) a tax credit equal to:

702 (A) for the taxable year beginning on or after January 1, 2008, but beginning on or
703 before December 31, 2008, 5% of the claimant's, estate's, or trust's qualified research expenses
704 for the current taxable year;

705 (B) for the taxable year beginning on or after January 1, 2009, but beginning on or
706 before December 31, 2009, 6.3% of the claimant's, estate's, or trust's qualified research
707 expenses for the current taxable year; or

708 (C) for taxable years beginning on or after January 1, 2010, 9.2% of the claimant's,
709 estate's, or trust's qualified research expenses for the current taxable year.

710 (b) Subject to Subsection (4), a claimant, estate, or trust may claim a tax credit under:

711 (i) Subsection (1)(a)(i) or (1)(a)(iii), for the taxable year for which the claimant, estate,
712 or trust incurs the qualified research expenses; or

713 (ii) Subsection (1)(a)(ii), for the taxable year for which the claimant, estate, or trust
714 makes the payment to the qualified organization.

715 (c) The tax credits provided for in this section do not include the alternative
716 incremental credit provided for in Section 41(c)(4), Internal Revenue Code.

717 (2) Except as specifically provided for in this section:

718 (a) the tax credits authorized under Subsection (1) shall be calculated as provided in
719 Section 41, Internal Revenue Code; and

720 (b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating
721 the tax credits authorized under Subsection (1).

722 (3) For purposes of this section:

723 (a) the base amount shall be calculated as provided in Sections 41(c) and 41(h),
724 Internal Revenue Code, except that:

725 (i) the base amount does not include the calculation of the alternative incremental
726 credit provided for in Section 41(c)(4), Internal Revenue Code;

727 (ii) a claimant's, estate's, or trust's gross receipts include only those gross receipts
728 attributable to sources within this state as provided in Section 59-10-118; and

729 (iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating
730 the base amount, a claimant, estate, or trust:

731 (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B)
732 regardless of whether the claimant, estate, or trust meets the requirements of Section
733 41(c)(3)(B)(i)(I) or (II); and

734 (B) may not revoke an election to be treated as a start-up company under Subsection
735 (3)(a)(iii)(A);

736 (b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except
737 that the term includes only basic research conducted in this state;

738 (c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except
739 that the term includes only qualified research conducted in this state;

740 (d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal

741 Revenue Code, except that the term includes only:

742 (i) in-house research expenses incurred in this state; and

743 (ii) contract research expenses incurred in this state; and

744 (e) a tax credit provided for in this section is not terminated if a credit terminates under

745 Section 41, Internal Revenue Code.

746 (4) (a) If the amount of a tax credit claimed by a claimant, estate, or trust under
747 Subsection (1)(a)(i) or (ii) exceeds the claimant's, estate's, or trust's tax liability under this
748 chapter for a taxable year, the amount of the tax credit exceeding the tax liability:

749 (i) may be carried forward for a period that does not exceed the next 14 taxable years;

750 and

751 (ii) may not be carried back to a taxable year preceding the current taxable year.

752 (b) A claimant, estate, or trust may not carry forward the tax credit allowed by

753 Subsection (1)(a)(iii).

754 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
755 commission may make rules for purposes of this section prescribing a certification process for
756 qualified organizations to ensure that amounts paid to the qualified organizations are for basic
757 research conducted in this state.

758 (6) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
759 commission shall report the modification or repeal to the [~~Utah Tax Review Commission~~]
760 Revenue and Taxation Interim Committee within 60 days after the day on which the
761 modification or repeal becomes effective.

762 (7) (a) The [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee
763 shall review the tax credits provided for in this section on or before October 1 of the year after
764 the year in which the commission reports under Subsection (6) a modification or repeal of a
765 provision of Section 41, Internal Revenue Code.

766 (b) Notwithstanding Subsection (7)(a), the [~~Utah Tax Review Commission~~] Revenue
767 and Taxation Interim Committee is not required to review the tax credits provided for in this
768 section if the only modification to a provision of Section 41, Internal Revenue Code, is the
769 extension of the termination date provided for in Section 41(h), Internal Revenue Code.

770 (c) The [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee
771 shall address in a review under this section:

- 772 (i) the cost of the tax credits provided for in this section;
773 (ii) the purpose and effectiveness of the tax credits provided for in this section;
774 (iii) whether the tax credits provided for in this section benefit the state; and
775 (iv) whether the tax credits provided for in this section should be:
776 (A) continued;
777 (B) modified; or
778 (C) repealed.
779 (d) If the [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee
780 reviews the tax credits provided for in this section, the [~~Utah Tax Review Commission~~]
781 committee shall report its findings to the [~~Revenue and Taxation Interim~~] Legislative
782 Management Committee on or before the November interim meeting of the year in which the
783 [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee reviews the tax
784 credits.

785 Section 12. Section **59-10-1013** is amended to read:

786 **59-10-1013. Tax credits for machinery, equipment, or both primarily used for**
787 **conducting qualified research or basic research -- Carry forward -- Commission to report**
788 **modification or repeal of certain federal provisions -- Revenue and Taxation Interim**
789 **Committee study.**

790 (1) As used in this section:

791 (a) "Basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except
792 that the term includes only basic research conducted in this state.

793 (b) "Equipment" includes:

794 (i) a computer;

795 (ii) computer equipment; and

796 (iii) computer software.

797 (c) "Purchase price":

798 (i) includes the cost of installing an item of machinery or equipment; and

799 (ii) does not include a tax imposed under Chapter 12, Sales and Use Tax Act, on an
800 item of machinery or equipment.

801 (d) "Qualified organization" is as defined in Section 41(e)(6), Internal Revenue Code.

802 (e) "Qualified research" is as defined in Section 41(d), Internal Revenue Code, except

803 that the term includes only qualified research conducted in this state.

804 (2) (a) Except as provided in Subsection (2)(c), for taxable years beginning on or after
805 January 1, 1999, but beginning before December 31, 2010, a claimant, estate, or trust meeting
806 the requirements of this section may claim the following nonrefundable tax credits:

807 (i) a tax credit of 6% of the purchase price of machinery, equipment, or both:

808 (A) purchased by the claimant, estate, or trust during the taxable year;

809 (B) that is subject to a tax under Chapter 12, Sales and Use Tax Act; and

810 (C) that is primarily used to conduct qualified research in this state; and

811 (ii) a tax credit of 6% of the purchase price paid by the claimant, estate, or trust for
812 machinery, equipment, or both:

813 (A) purchased by the claimant, estate, or trust during the taxable year;

814 (B) that is subject to a tax under Chapter 12, Sales and Use Tax Act;

815 (C) that is donated to a qualified organization; and

816 (D) that is primarily used to conduct basic research in this state.

817 (b) Subject to Subsection (4), a claimant, estate, or trust may claim a tax credit under
818 this section for the taxable year for which the claimant, estate, or trust purchases the machinery,
819 equipment, or both.

820 (c) If a claimant, estate, or trust qualifies for a tax credit under Subsection (2)(a) for a
821 purchase of machinery, equipment, or both, the claimant, estate, or trust may not claim the tax
822 credit or carry the tax credit forward if the machinery, equipment, or both, is primarily used to
823 conduct qualified research in the state for a time period that is less than 12 consecutive months.

824 (3) Notwithstanding Section 41(h), Internal Revenue Code, a tax credit provided for in
825 this section is not terminated if a credit terminates under Section 41, Internal Revenue Code.

826 (4) If the amount of a tax credit claimed by a claimant, estate, or trust under this section
827 exceeds a claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the
828 amount of the tax credit exceeding the tax liability:

829 (a) may be carried forward for a period that does not exceed the next 14 taxable years;
830 and

831 (b) may not be carried back to a taxable year preceding the current taxable year.

832 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
833 commission may make rules for purposes of this section prescribing a certification process for

834 qualified organizations to ensure that machinery, equipment, or both provided to the qualified
835 organization is to be primarily used to conduct basic research in this state.

836 (6) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
837 commission shall report the modification or repeal to the [~~Utah Tax Review Commission~~]
838 Revenue and Taxation Interim Committee within 60 days after the day on which the
839 modification or repeal becomes effective.

840 (7) (a) The [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee
841 shall review the tax credits provided for in this section on or before October 1 of the year after
842 the year in which the commission reports under Subsection (6) a modification or repeal of a
843 provision of Section 41, Internal Revenue Code.

844 (b) Notwithstanding Subsection (7)(a), the [~~Utah Tax Review Commission~~] Revenue
845 and Taxation Interim Committee is not required to review the tax credits provided for in this
846 section if the only modification to a provision of Section 41, Internal Revenue Code, is the
847 extension of the termination date provided for in Section 41(h), Internal Revenue Code.

848 (c) The [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee
849 shall address in a review under this section the:

- 850 (i) cost of the tax credits provided for in this section;
851 (ii) purpose and effectiveness of the tax credits provided for in this section;
852 (iii) whether the tax credits provided for in this section benefit the state; and
853 (iv) whether the tax credits provided for in this section should be:
854 (A) continued;
855 (B) modified; or
856 (C) repealed.

857 (d) If the [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee
858 reviews the tax credits provided for in this section, the [~~Utah Tax Review Commission~~]
859 committee shall report its findings to the [~~Revenue and Taxation Interim~~] Legislative
860 Management Committee on or before the November interim meeting of the year in which the
861 [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee reviews the tax
862 credits.

863 Section 13. Section **59-10-1014** is amended to read:

864 **59-10-1014. Renewable energy systems tax credit -- Definitions -- Limitations --**

865 **Certification -- Rulemaking authority.**

866 (1) As used in this part:

867 (a) "Active solar system":

868 (i) means a system of equipment capable of collecting and converting incident solar
869 radiation into thermal, mechanical, or electrical energy, and transferring these forms of energy
870 by a separate apparatus to storage or to the point of use; and871 (ii) includes water heating, space heating or cooling, and electrical or mechanical
872 energy generation.873 (b) "Biomass system" means any system of apparatus and equipment for use in
874 converting material into biomass energy, as defined in Section 59-12-102, and transporting that
875 energy by separate apparatus to the point of use or storage.

876 (c) "Business entity" means any entity under which business is conducted or transacted.

877 (d) "Direct-use geothermal system" means a system of apparatus and equipment
878 enabling the direct use of thermal energy, generally between 100 and 300 degrees Fahrenheit,
879 that is contained in the earth to meet energy needs, including heating a building, an industrial
880 process, and aquaculture.881 (e) "Geothermal electricity" means energy contained in heat that continuously flows
882 outward from the earth that is used as a sole source of energy to produce electricity.883 (f) "Geothermal heat-pump system" means a system of apparatus and equipment
884 enabling the use of thermal properties contained in the earth at temperatures well below 100
885 degrees Fahrenheit to help meet heating and cooling needs of a structure.886 (g) "Hydroenergy system" means a system of apparatus and equipment capable of
887 intercepting and converting kinetic water energy into electrical or mechanical energy and
888 transferring this form of energy by separate apparatus to the point of use or storage.

889 (h) "Passive solar system":

890 (i) means a direct thermal system that utilizes the structure of a building and its
891 operable components to provide for collection, storage, and distribution of heating or cooling
892 during the appropriate times of the year by utilizing the climate resources available at the site;
893 and894 (ii) includes those portions and components of a building that are expressly designed
895 and required for the collection, storage, and distribution of solar energy.

896 (i) "Residential energy system" means any active solar, passive solar, biomass,
897 direct-use geothermal, geothermal heat-pump system, wind, or hydroenergy system used to
898 supply energy to or for any residential unit.

899 (j) "Residential unit" means any house, condominium, apartment, or similar dwelling
900 unit that serves as a dwelling for a person, group of persons, or a family but does not include
901 property subject to a fee under:

- 902 (i) Section 59-2-404;
- 903 (ii) Section 59-2-405;
- 904 (iii) Section 59-2-405.1;
- 905 (iv) Section 59-2-405.2; or
- 906 (v) Section 59-2-405.3.

907 (k) "Utah Geological Survey" means the Utah Geological Survey established in Section
908 79-3-201.

909 (l) "Wind system" means a system of apparatus and equipment capable of intercepting
910 and converting wind energy into mechanical or electrical energy and transferring these forms of
911 energy by a separate apparatus to the point of use or storage.

912 (2) For taxable years beginning on or after January 1, 2007, a claimant, estate, or trust
913 may claim a nonrefundable tax credit as provided in this section if:

914 (a) a claimant, estate, or trust that is not a business entity purchases and completes or
915 participates in the financing of a residential energy system to supply all or part of the energy for
916 the claimant's, estate's, or trust's residential unit in the state; or

917 (b) (i) a claimant, estate, or trust that is a business entity sells a residential unit to
918 another claimant, estate, or trust that is not a business entity before making a claim for a tax
919 credit under Subsection (6) or Section 59-7-614; and

920 (ii) the claimant, estate, or trust that is a business entity assigns its right to the tax credit
921 to the claimant, estate, or trust that is not a business entity as provided in Subsection (6)(c) or
922 Subsection 59-7-614(2)(a)(iii).

923 (3) (a) The tax credit described in Subsection (2) is equal to 25% of the reasonable
924 costs of each residential energy system, including installation costs, against any income tax
925 liability of the claimant, estate, or trust under this chapter for the taxable year in which the
926 residential energy system is completed and placed in service.

927 (b) The total amount of each tax credit under this section may not exceed \$2,000 per
928 residential unit.

929 (c) The tax credit under this section is allowed for any residential energy system
930 completed and placed in service on or after January 1, 2007.

931 (4) (a) The tax credit provided for in this section shall be claimed in the return for the
932 taxable year in which the residential energy system is completed and placed in service.

933 (b) Additional residential energy systems or parts of residential energy systems may be
934 similarly claimed in returns for subsequent taxable years as long as the total amount claimed
935 does not exceed \$2,000 per residential unit.

936 (c) If the amount of the tax credit under this section exceeds the income tax liability of
937 the claimant, estate, or trust claiming the tax credit under this section for that taxable year, then
938 the amount not used may be carried over for a period that does not exceed the next four taxable
939 years.

940 (5) (a) A claimant, estate, or trust that is not a business entity that leases a residential
941 energy system installed on a residential unit is eligible for the residential energy tax credit if
942 that claimant, estate, or trust confirms that the lessor irrevocably elects not to claim the tax
943 credit.

944 (b) Only the principal recovery portion of the lease payments, which is the cost
945 incurred by the claimant, estate, or trust in acquiring the residential energy system excluding
946 interest charges and maintenance expenses, is eligible for the tax credits.

947 (c) A claimant, estate, or trust described in this Subsection (5) may use the tax credits
948 for a period that does not exceed seven years from the initiation of the lease.

949 (6) (a) A claimant, estate, or trust that is a business entity that purchases and completes
950 or participates in the financing of a residential energy system to supply all or part of the energy
951 required for a residential unit owned or used by the claimant, estate, or trust that is a business
952 entity and situated in Utah is entitled to a nonrefundable tax credit as provided in this
953 Subsection (6).

954 (b) (i) For taxable years beginning on or after January 1, 2007, a claimant, estate, or
955 trust that is a business entity is entitled to a nonrefundable tax credit equal to 25% of the
956 reasonable costs of a residential energy system installed with respect to each residential unit it
957 owns or uses, including installation costs, against any tax due under this chapter for the taxable

958 year in which the energy system is completed and placed in service.

959 (ii) The total amount of the tax credit under this Subsection (6) may not exceed \$2,000
960 per residential unit.

961 (iii) The tax credit under this Subsection (6) is allowed for any residential energy
962 system completed and placed in service on or after January 1, 2007.

963 (c) If a claimant, estate, or trust that is a business entity sells a residential unit to a
964 claimant, estate, or trust that is not a business entity before making a claim for the tax credit
965 under this Subsection (6), the claimant, estate, or trust that is a business entity may:

966 (i) assign its right to this tax credit to the claimant, estate, or trust that is not a business
967 entity; and

968 (ii) if the claimant, estate, or trust that is a business entity assigns its right to the tax
969 credit to a claimant, estate, or trust that is not a business entity under Subsection (6)(c)(i), the
970 claimant, estate, or trust that is not a business entity may claim the tax credit as if that claimant,
971 estate, or trust that is not a business entity had completed or participated in the costs of the
972 residential energy system under this section.

973 (7) (a) A tax credit under this section may be claimed for the taxable year in which the
974 residential energy system is completed and placed in service.

975 (b) Additional residential energy systems or parts of residential energy systems may be
976 claimed for subsequent years.

977 (c) If the amount of a tax credit under this section exceeds the tax liability of the
978 claimant, estate, or trust claiming the tax credit under this section for a taxable year, the amount
979 of the tax credit exceeding the tax liability may be carried over for a period which does not
980 exceed the next four taxable years.

981 (8) (a) Except as provided in Subsection (8)(b), tax credits provided for under this
982 section are in addition to any tax credits provided under the laws or rules and regulations of the
983 United States.

984 (b) A purchaser of one or more solar units that claims a tax credit under Section
985 59-10-1024 for the purchase of the one or more solar units may not claim a tax credit under this
986 section for that purchase.

987 (9) (a) The Utah Geological Survey may set standards for residential energy systems
988 that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to

989 ensure that the systems eligible for the tax credit use the state's renewable and nonrenewable
990 energy resources in an appropriate and economic manner.

991 (b) The Utah Geological Survey may set standards for residential and commercial
992 energy systems that establish the reasonable costs of an energy system, as used in Subsections
993 (3)(a) and (6)(b)(i), as an amount per unit of energy production.

994 (c) A tax credit may not be taken under this section until the Utah Geological Survey
995 has certified that the energy system has been completely installed and is a viable system for
996 saving or production of energy from renewable resources.

997 (10) The Utah Geological Survey and the commission may make rules in accordance
998 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are necessary to
999 implement this section.

1000 (11) (a) On or before October 1, 2012, and every five years thereafter, the [~~Utah Tax~~
1001 ~~Review Commission~~] Revenue and Taxation Interim Committee shall review each tax credit
1002 provided by this section and [~~make~~] report its recommendations to the [~~Revenue and Taxation~~
1003 ~~Interim~~] Legislative Management Committee concerning whether the credit should be
1004 continued, modified, or repealed.

1005 (b) The [~~Utah Tax Review Commission's~~] Revenue and Taxation Interim Committee's
1006 report under Subsection (11)(a) shall include information concerning the cost of the credit, the
1007 purpose and effectiveness of the credit, and the state's benefit from the credit.

1008 Section 14. Section **59-10-1024** is amended to read:

1009 **59-10-1024. Nonrefundable tax credit for qualifying solar projects.**

1010 (1) As used in this section:

1011 (a) "Active solar system" is as defined in Section 59-10-1014.

1012 (b) "Purchaser" means a claimant, estate, or trust that purchases one or more solar units
1013 from a qualifying political subdivision.

1014 (c) "Qualifying political subdivision" means:

1015 (i) a city or town in this state;

1016 (ii) an interlocal entity created under Title 11, Chapter 13, Interlocal Cooperation Act;

1017 or

1018 (iii) a special service district created under Title 17D, Chapter 1, Special Service
1019 District Act.

- 1020 (d) "Qualifying solar project" means the portion of an active solar system:
- 1021 (i) that a qualifying political subdivision:
- 1022 (A) constructs;
- 1023 (B) controls; or
- 1024 (C) owns;
- 1025 (ii) with respect to which the qualifying political subdivision described in Subsection
- 1026 (1)(c)(i) sells one or more solar units; and
- 1027 (iii) that generates electrical output that is furnished:
- 1028 (A) to one or more residential units; or
- 1029 (B) for the benefit of one or more residential units.
- 1030 (e) "Residential unit" is as defined in Section 59-10-1014.
- 1031 (f) "Solar unit" means a portion of the electrical output:
- 1032 (i) of a qualifying solar project;
- 1033 (ii) that a qualifying political subdivision sells to a purchaser; and
- 1034 (iii) the purchase of which requires that the purchaser agree to bear a proportionate
- 1035 share of the expense of the qualifying solar project:
- 1036 (A) in accordance with a written agreement between the purchaser and the qualifying
- 1037 political subdivision;
- 1038 (B) in exchange for a credit on the purchaser's electrical bill; and
- 1039 (C) as determined by a formula established by the qualifying political subdivision.
- 1040 (2) Subject to Subsection (3), for taxable years beginning on or after January 1, 2009, a
- 1041 purchaser may claim a nonrefundable tax credit equal to the product of:
- 1042 (a) the amount the purchaser pays to purchase one or more solar units during the
- 1043 taxable year; and
- 1044 (b) 25%.
- 1045 (3) For a taxable year, a tax credit under this section may not exceed \$2,000 on a
- 1046 return.
- 1047 (4) A purchaser may carry forward a tax credit under this section for a period that does
- 1048 not exceed the next four taxable years if:
- 1049 (a) the purchaser is allowed to claim a tax credit under this section for a taxable year;
- 1050 and

1051 (b) the amount of the tax credit exceeds the purchaser's tax liability under this chapter
1052 for that taxable year.

1053 (5) Subject to Section 59-10-1014, a tax credit under this section is in addition to any
1054 other tax credit allowed by this chapter.

1055 (6) (a) On or before October 1, 2012, and every five years after October 1, 2012, the
1056 [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee shall review the tax
1057 credit allowed by this section and [~~make~~] report its recommendations to the [~~Revenue and~~
1058 ~~Taxation Interim~~] Legislative Management Committee concerning whether the tax credit
1059 should be continued, modified, or repealed.

1060 (b) The [~~Utah Tax Review Commission's~~] Revenue and Taxation Interim Committee's
1061 report under Subsection (6)(a) shall include information concerning the cost of the tax credit,
1062 the purpose and effectiveness of the tax credit, and the state's benefit from the tax credit.

1063 Section 15. Section **59-10-1106** is amended to read:

1064 **59-10-1106. Refundable renewable energy tax credit.**

1065 (1) As used in this section:

1066 (a) "Active solar system" is as defined in Section 59-10-1014.

1067 (b) "Biomass system" is as defined in Section 59-10-1014.

1068 (c) "Business entity" is as defined in Section 59-10-1014.

1069 (d) "Commercial energy system" means any active solar, passive solar, geothermal
1070 electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or
1071 biomass system used to supply energy to a commercial unit or as a commercial enterprise.

1072 (e) "Commercial enterprise" means a business entity that:

1073 (i) is a claimant, estate, or trust; and

1074 (ii) has the purpose of producing electrical, mechanical, or thermal energy for sale from
1075 a commercial energy system.

1076 (f) (i) "Commercial unit" means any building or structure that a business entity that is a
1077 claimant, estate, or trust uses to transact its business.

1078 (ii) Notwithstanding Subsection (1)(f)(i):

1079 (A) in the case of an active solar system used for agricultural water pumping or a wind
1080 system, each individual energy generating device shall be a commercial unit; and

1081 (B) if an energy system is the building or structure that a business entity that is a

1082 claimant, estate, or trust uses to transact its business, a commercial unit is the complete energy
1083 system itself.

1084 (g) "Direct-use geothermal system" is as defined in Section 59-10-1014.

1085 (h) "Geothermal electricity" is as defined in Section 59-10-1014.

1086 (i) "Geothermal heat-pump system" is as defined in Section 59-10-1014.

1087 (j) "Hydroenergy system" is as defined in Section 59-10-1014.

1088 (k) "Passive solar system" is as defined in Section 59-10-1014.

1089 (l) "Utah Geological Survey" means the Utah Geological Survey established in Section
1090 79-3-201.

1091 (m) "Wind system" is as defined in Section 59-10-1014.

1092 (2) (a) (i) A business entity that is a claimant, estate, or trust that purchases or
1093 participates in the financing of a commercial energy system situated in Utah is entitled to a
1094 refundable tax credit as provided in this Subsection (2)(a) if the commercial energy system
1095 does not use wind, geothermal electricity, or biomass equipment capable of producing a total of
1096 660 or more kilowatts of electricity and:

1097 (A) the commercial energy system supplies all or part of the energy required by
1098 commercial units owned or used by the business entity that is a claimant, estate, or trust; or

1099 (B) the business entity that is a claimant, estate, or trust sells all or part of the energy
1100 produced by the commercial energy system as a commercial enterprise.

1101 (ii) (A) A business entity that is a claimant, estate, or trust is entitled to a tax credit of
1102 up to 10% of the reasonable costs of any commercial energy system installed, including
1103 installation costs, against any tax due under this chapter for the taxable year in which the
1104 commercial energy system is completed and placed in service.

1105 (B) Notwithstanding Subsection (2)(a)(ii)(A), the total amount of the credit under this
1106 Subsection (2)(a) may not exceed \$50,000 per commercial unit.

1107 (C) The credit under this Subsection (2)(a) is allowed for any commercial energy
1108 system completed and placed in service on or after January 1, 2007.

1109 (iii) A business entity that is a claimant, estate, or trust that leases a commercial energy
1110 system installed on a commercial unit is eligible for the tax credit under this Subsection (2)(a)
1111 if the lessee can confirm that the lessor irrevocably elects not to claim the credit.

1112 (iv) Only the principal recovery portion of the lease payments, which is the cost

1113 incurred by a business entity that is a claimant, estate, or trust in acquiring a commercial energy
1114 system, excluding interest charges and maintenance expenses, is eligible for the tax credit
1115 under this Subsection (2)(a).

1116 (v) A business entity that is a claimant, estate, or trust that leases a commercial energy
1117 system is eligible to use the tax credit under this Subsection (2)(a) for a period no greater than
1118 seven years from the initiation of the lease.

1119 (b) (i) A business entity that is a claimant, estate, or trust that owns a commercial
1120 energy system situated in Utah using wind, geothermal electricity, or biomass equipment
1121 capable of producing a total of 660 or more kilowatts of electricity is entitled to a refundable
1122 tax credit as provided in this section if:

1123 (A) the commercial energy system supplies all or part of the energy required by
1124 commercial units owned or used by the business entity that is a claimant, estate, or trust; or

1125 (B) the business entity that is a claimant, estate, or trust sells all or part of the energy
1126 produced by the commercial energy system as a commercial enterprise.

1127 (ii) A business entity that is a claimant, estate, or trust is entitled to a tax credit under
1128 this Subsection (2)(b) equal to the product of:

1129 (A) 0.35 cents; and

1130 (B) the kilowatt hours of electricity produced and either used or sold during the taxable
1131 year.

1132 (iii) The credit allowed by this Subsection (2)(b):

1133 (A) may be claimed for production occurring during a period of 48 months beginning
1134 with the month in which the commercial energy system is placed in service; and

1135 (B) may not be carried forward or back.

1136 (iv) A business entity that is a claimant, estate, or trust that leases a commercial energy
1137 system installed on a commercial unit is eligible for the tax credit under this section if the
1138 lessee can confirm that the lessor irrevocably elects not to claim the credit.

1139 (3) The tax credits provided for under this section are in addition to any tax credits
1140 provided under the laws or rules and regulations of the United States.

1141 (4) (a) The Utah Geological Survey may set standards for commercial energy systems
1142 claiming a tax credit under Subsection (2)(a) that cover the safety, reliability, efficiency,
1143 leasing, and technical feasibility of the systems to ensure that the systems eligible for the tax

1144 credit use the state's renewable and nonrenewable energy resources in an appropriate and
1145 economic manner.

1146 (b) A tax credit may not be taken under this section until the Utah Geological Survey
1147 has certified that the commercial energy system has been completely installed and is a viable
1148 system for saving or production of energy from renewable resources.

1149 (5) The Utah Geological Survey and the commission may make rules in accordance
1150 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are necessary to
1151 implement this section.

1152 (6) (a) On or before October 1, 2012, and every five years thereafter, the [~~Utah Tax~~
1153 ~~Review Commission~~] Revenue and Taxation Interim Committee shall review each tax credit
1154 provided by this section and [~~make~~] report its recommendations to the [~~Revenue and Taxation~~
1155 ~~Interim~~] Legislative Management Committee concerning whether the credit should be
1156 continued, modified, or repealed.

1157 (b) The [~~Utah Tax Review Commission's~~] Revenue and Taxation Interim Committee's
1158 report under Subsection (6)(a) shall include information concerning the cost of the credit, the
1159 purpose and effectiveness of the credit, and the state's benefit from the credit.

1160 Section 16. Section **59-10-1107** is amended to read:

1161 **59-10-1107. Refundable economic development tax credit.**

1162 (1) As used in this section:

1163 (a) "Business entity" means a claimant, estate, or trust that meets the definition of
1164 "business entity" as defined in Section 63M-1-2403 or 63M-1-2803.

1165 (b) "Office" means the Governor's Office of Economic Development.

1166 (2) Subject to the other provisions of this section, a business entity may claim a
1167 refundable tax credit for economic development.

1168 (3) The tax credit under this section is the amount listed as the tax credit amount on the
1169 tax credit certificate that the office issues to the business entity for the taxable year.

1170 (4) (a) In accordance with any rules prescribed by the commission under Subsection
1171 (4)(b), the commission shall make a refund to a business entity that claims a tax credit under
1172 this section if the amount of the tax credit exceeds the business entity's tax liability for a
1173 taxable year.

1174 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1175 commission may make rules providing procedures for making a refund to a business entity as
 1176 required by Subsection (4)(a).

1177 (5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the
 1178 ~~[Utah Tax Review Commission]~~ Revenue and Taxation Interim Committee shall study the tax
 1179 credit allowed by this section and make recommendations to the ~~[Revenue and Taxation~~
 1180 ~~Interim]~~ Legislative Management Committee and the Workforce Services and Community and
 1181 Economic Development Interim Committee concerning whether the tax credit should be
 1182 continued, modified, or repealed.

1183 (b) For purposes of the study required by this Subsection (5), the office shall provide
 1184 the following information to the ~~[Utah Tax Review Commission]~~ Revenue and Taxation
 1185 Interim Committee:

1186 (i) the amount of tax credit the office grants to each taxpayer for each calendar year;
 1187 (ii) the criteria the office uses in granting a tax credit;
 1188 (iii) the new state revenues generated by each taxpayer for each calendar year;
 1189 (iv) the information contained in the office's latest report to the Legislature under
 1190 Section 63M-1-2406 or 63M-1-2806; and

1191 (v) any other information that the ~~[Utah Tax Review Commission]~~ Revenue and
 1192 Taxation Interim Committee requests.

1193 (c) The ~~[Utah Tax Review Commission]~~ Revenue and Taxation Interim Committee
 1194 shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:

1195 (i) the cost of the tax credit to the state;
 1196 (ii) the purpose and effectiveness of the tax credit; and
 1197 (iii) the extent to which the state benefits from the tax credit.

1198 Section 17. Section **59-10-1108** is amended to read:

1199 **59-10-1108. Refundable motion picture tax credit.**

1200 (1) As used in this section:

1201 (a) "Motion picture company" means a claimant, estate, or trust that meets the
 1202 definition of a motion picture company under Section 63M-1-1802.

1203 (b) "Office" means the Governor's Office of Economic Development.

1204 (c) "State-approved production" has the same meaning as defined in Subsection
 1205 63M-1-1802(10).

1206 (2) For taxable years beginning on or after January 1, 2009, a motion picture company
1207 may claim a refundable tax credit for a state-approved production.

1208 (3) The tax credit under this section is the amount listed as the tax credit amount on the
1209 tax credit certificate that the office issues to a motion picture company under Section
1210 63M-1-1803 for the taxable year.

1211 (4) (a) In accordance with any rules prescribed by the commission under Subsection
1212 (4)(b), the commission shall make a refund to a motion picture company that claims a tax
1213 credit under this section if the amount of the tax credit exceeds the motion picture company's
1214 tax liability for the taxable year.

1215 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1216 commission may make rules providing procedures for making a refund to a motion picture
1217 company as required by Subsection (4)(a).

1218 (5) (a) On or before October 1, 2014, and every five years after October 1, 2014, the
1219 [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee shall study the tax
1220 credit allowed by this section and make recommendations to the [~~Revenue and Taxation~~
1221 ~~Interim~~] Legislative Management Committee and the Workforce Services and Community and
1222 Economic Development Interim Committee concerning whether the tax credit should be
1223 continued, modified, or repealed.

1224 (b) For purposes of the study required by this Subsection (5), the office shall provide
1225 the following information to the [~~Utah Tax Review Commission~~] Revenue and Taxation
1226 Interim Committee:

1227 (i) the amount of tax credit the office grants to each taxpayer for each calendar year;

1228 (ii) the criteria the office uses in granting a tax credit;

1229 (iii) the dollars left in the state, as defined in Subsection 63M-1-1802(2), by each
1230 motion picture company for each calendar year;

1231 (iv) the information contained in the office's latest report to the Legislature under
1232 Section 63M-1-1805; and

1233 (v) any other information requested by the [~~Utah Tax Review Commission~~] Revenue
1234 and Taxation Interim Committee.

1235 (c) The [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee
1236 shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:

- 1237 (i) the cost of the tax credit to the state;
 1238 (ii) the effectiveness of the tax credit; and
 1239 (iii) the extent to which the state benefits from the tax credit.

1240 Section 18. Section **59-12-103.1** is amended to read:

1241 **59-12-103.1. Action by Supreme Court of the United States authorizing or action**
 1242 **by Congress permitting a state to require certain sellers to collect a sales or use tax --**
 1243 **Collection of tax by commission -- Commission report to Revenue and Taxation Interim**
 1244 **Committee -- Revenue and Taxation Interim Committee study.**

1245 (1) Except as provided in Section 59-12-107.1, a seller shall remit a tax to the
 1246 commission as provided in Section 59-12-107 if:

1247 (a) the Supreme Court of the United States issues a decision authorizing a state to
 1248 require a seller that does not meet one or more of the criteria described in Subsection
 1249 59-12-107(1)(a) to collect a sales or use tax; or

1250 (b) Congress permits the state to require a seller that does not meet one or more of the
 1251 criteria described in Subsection 59-12-107(1)(a) to collect a sales or use tax.

1252 (2) The commission shall:

1253 (a) collect the tax described in Subsection (1) from the seller:

1254 (i) to the extent:

1255 (A) authorized by the Supreme Court of the United States; or

1256 (B) permitted by Congress; and

1257 (ii) beginning on the first day of a calendar quarter as prescribed by the [~~Utah Tax~~
 1258 ~~Review Commission~~] Revenue and Taxation Interim Committee; and

1259 (b) make a report to the [~~Utah Tax Review Commission~~] Revenue and Taxation
 1260 Interim Committee:

1261 (i) regarding the actions taken by:

1262 (A) the Supreme Court of the United States; or

1263 (B) Congress; and

1264 (ii) at the [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee
 1265 meeting immediately following the day on which the Supreme Court of the United States' or
 1266 Congress' actions become effective.

1267 (3) The [~~Utah Tax Review Commission~~] Revenue and Taxation Interim Committee

1268 shall after hearing the commission's report under Subsection (2)(b):

1269 (a) review the actions taken by:

1270 (i) the Supreme Court of the United States; or

1271 (ii) Congress;

1272 (b) direct the commission regarding the day on which the commission is required to
1273 collect the tax described in Subsection (1); and

1274 (c) make recommendations to the [~~Revenue and Taxation Interim~~] Legislative
1275 Management Committee:

1276 (i) regarding whether as a result of the Supreme Court of the United States' or
1277 Congress' actions any provisions of this chapter should be amended or repealed; and

1278 (ii) within a one-year period after the day on which the commission makes a report
1279 under Subsection (2)(b).

1280 Section 19. Section **59-12-104.5** is amended to read:

1281 **59-12-104.5. Revenue and Taxation Interim Committee review of sales and use**
1282 **taxes.**

1283 [~~(1) The Utah Tax Review Commission, in cooperation with the governor's office and~~
1284 ~~the commission, shall review the sales and use tax system of the state as provided in this~~
1285 ~~section.]~~

1286 [~~(2)(a) Beginning with the 2009 interim, and one or more times every 10 years after~~
1287 ~~the 2009 interim, the Utah Tax Review Commission shall make findings and recommendations~~
1288 ~~as to whether:]~~

1289 [~~(i) the sales and use tax is broadly based;]~~

1290 [~~(ii) the sales and use tax base reflects the overall economy;]~~

1291 [~~(iii) the sales and use tax mitigates regressive impacts;]~~

1292 [~~(iv) the sales and use tax is administratively simple; and]~~

1293 [~~(v) the sales and use tax promotes compliance.]~~

1294 [~~(b) On or before the November interim meeting of the year in which the Utah Tax~~
1295 ~~Review Commission makes the findings and recommendations required by Subsection (2)(a);~~
1296 ~~the Utah Tax Review Commission shall report its findings and recommendations made in~~
1297 ~~accordance with Subsection (2)(a) to:]~~

1298 [~~(i) the governor; and]~~

1299 ~~[(ii) the Revenue and Taxation Interim Committee.]~~

1300 ~~[(3) Notwithstanding Subsection (2):]~~

1301 ~~[(a) the Utah Tax Review Commission]~~ The Revenue and Taxation Interim Committee
1302 shall;

1303 (1) review Subsection 59-12-104(28) before October 1 of the year after the year in
1304 which Congress permits a state to participate in the special supplemental nutrition program
1305 under 42 U.S.C. Sec. 1786 even if state or local sales taxes are collected within the state on
1306 purchases of food under that program;

1307 ~~[(b) the Utah Tax Review Commission shall]~~ (2) review Subsection 59-12-104(21)
1308 before October 1 of the year after the year in which Congress permits a state to participate in
1309 the food stamp program under the Food Stamp Act, 7 U.S.C. Sec. 2011 et seq., even if state or
1310 local sales taxes are collected within the state on purchases of food under that program; and

1311 ~~[(c) the Utah Tax Review Commission shall]~~ (3) review Subsection 59-12-104(62)
1312 before the October 2011 interim meeting.

1313 Section 20. Section **63I-3-203** is amended to read:

1314 **63I-3-203. Duties.**

1315 ~~[(1) Subject to Subsection (2), the Utah Constitutional Revision Commission shall:]~~

1316 ~~[(a) conduct a comprehensive examination of the Utah Constitution, as amended, and~~
1317 ~~make recommendations to the governor and the Legislature as to specific proposed~~
1318 ~~constitutional amendments to implement the commission's recommendations for changes in the~~
1319 ~~constitution; and]~~

1320 ~~[(b) upon request of the governor, president of the Senate, speaker of the House of~~
1321 ~~Representatives, minority leader of the Senate, minority leader of the House, or the legislative~~
1322 ~~sponsor of a resolution to amend the Utah Constitution, advise the governor and the Legislature~~
1323 ~~on any proposed constitutional amendment or revision.]~~

1324 ~~[(2) The commission may not make a recommendation on a proposed constitutional~~
1325 ~~amendment after both houses of the Legislature have taken final action on it, unless requested~~
1326 ~~to do so by the governor, the president of the Senate, or the speaker of the House of~~
1327 ~~Representatives.]~~

1328 (1) The commission shall advise the Legislature on proposals to amend the Utah
1329 Constitution as the Legislature requests in a joint resolution of the Legislature.

1330 [~~(3)~~] (2) The commission shall select a chair and a vice chair from among its members.

1331 Section 21. Section **63I-3-204** is amended to read:

1332 **63I-3-204. The commission may invite testimony.**

1333 In performing its duties [~~and responsibilities~~] under Subsection 63I-3-203(1), the
1334 commission may invite testimony from the governor, state agencies, members of the Utah
1335 Legislature, and responsible members of the public.

1336 Section 22. Section **63I-3-207** is amended to read:

1337 **63I-3-207. Appointment of staff.**

1338 The Office of Legislative Research and General Counsel shall, in consultation with the
1339 chair and vice chair, provide staffing for the commission. [~~The office shall employ other staff
1340 members as the commission considers desirable or necessary.~~]

1341 Section 23. Section **63J-1-205** is amended to read:

1342 **63J-1-205. Revenue volatility report.**

1343 (1) Beginning in 2011 and continuing every three years after 2011, the Legislative
1344 Fiscal Analyst and the Governor's Office of Planning and Budget shall, by December 20,
1345 submit a joint revenue volatility report to the Executive Appropriations Committee [~~and Tax
1346 Review Commission~~].

1347 (2) The Legislative Fiscal Analyst and the Governor's Office of Planning and Budget
1348 shall ensure that the report:

1349 (a) discusses the tax base and the tax revenue volatility of the revenue streams that
1350 provide the source of funding for the state budget;

1351 (b) identifies the balances in the General Fund Budget Reserve Account and the
1352 Education Fund Budget Reserve Account; and

1353 (c) analyzes the adequacy of the balances in the General Fund Budget Reserve Account
1354 and the Education Fund Budget Reserve Account in relation to the volatility of the revenue
1355 streams.

1356 Section 24. Section **63M-1-1805** is amended to read:

1357 **63M-1-1805. Annual report.**

1358 The office shall report annually to the Legislature's Workforce Services and Community
1359 and Economic Development Interim Committee [~~and the Utah Tax Review Commission~~]
1360 describing:

1361 (1) its success in attracting within-the-state production of television series,
1362 made-for-television movies, and motion pictures, including feature films and independent
1363 films;

1364 (2) the amount of incentive commitments made by the office under this part and the
1365 period of time over which the incentives will be paid; and

1366 (3) the economic impact on the state related to:

1367 (a) dollars left in the state; and

1368 (b) providing motion picture incentives under this part.

1369 Section 25. Section **63M-1-2406** is amended to read:

1370 **63M-1-2406. Report to the Legislature.**

1371 The office shall report annually to the Legislature's Workforce Services and Community
1372 and Economic Development Interim Committee [~~and the Utah Tax Review Commission~~]
1373 describing:

1374 (1) its success in attracting new commercial projects to development zones under this
1375 part and the corresponding increase in new incremental jobs;

1376 (2) the estimated amount of tax credit commitments made by the office and the period
1377 of time over which tax credits will be paid; and

1378 (3) the economic impact on the state related to generating new state revenues and
1379 providing tax credits under this part.

1380 Section 26. Section **63M-1-2806** is amended to read:

1381 **63M-1-2806. Report to the Legislature.**

1382 The office shall report annually to the Legislature's Workforce Services and Community
1383 and Economic Development Interim Committee [~~and the Utah Tax Review Commission~~]
1384 describing:

1385 (1) its success in attracting alternative energy projects to alternative energy
1386 development zones under this part and the corresponding increase in new increment jobs;

1387 (2) the amount of tax credits promised and the period of time over which the tax credits
1388 will be paid; and

1389 (3) the economic impact on the state related to generating new state revenues and
1390 providing tax credits under this part.

Legislative Review Note
as of 1-17-11 7:07 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 44

SHORT TITLE: **State Commission Amendments**

SPONSOR: **Dayton, M.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Provisions of this bill may save money in the Tax Review Commission and Constitutional Revision Commission. The magnitude of savings is unknown and will depend on the the commissions' workload.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

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

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.