

**CORPORATE FRANCHISE AND INCOME TAX
CREDITS RELATING TO BIODIESEL OR
SYNGAS PRODUCTION**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Corporate Franchise and Income Taxes chapter to provide tax credits relating to biodiesel or syngas production.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides corporate franchise and income tax credits for:
 - a portion of the cost of the construction or remodel of a biodiesel production facility;
 - the production of biodiesel fuel; or
 - the production of syngas;
- ▶ addresses a taxpayer's ability to claim or carry forward the tax credits;
- ▶ provides that the total amount of the above tax credits that a taxpayer may claim or carry forward for a taxable year may not exceed \$1,000,000;
- ▶ grants rulemaking authority to the Air Quality Board to establish standards for:
 - biodiesel; or
 - syngas;
- ▶ requires the Air Quality Board to provide a written verification to a taxpayer for



28 purposes of the tax credit; and
29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill takes effect for taxable years beginning on or after January 1, 2008.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **19-2-104**, as last amended by Chapter 223, Laws of Utah 2006

37 **19-2-105**, as last amended by Chapter 2, Laws of Utah 2005

38 ENACTS:

39 **59-7-614.2**, Utah Code Annotated 1953



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

42 Section 1. Section **19-2-104** is amended to read:

43 **19-2-104. Powers of board.**

44 (1) The board may make rules in accordance with Title 63, Chapter 46a, Utah

45 Administrative Rulemaking Act:

46 (a) regarding the control, abatement, and prevention of air pollution from all sources
47 and the establishment of the maximum quantity of air contaminants that may be emitted by any
48 air contaminant source;

49 (b) establishing air quality standards;

50 (c) requiring persons engaged in operations which result in air pollution to:

51 (i) install, maintain, and use emission monitoring devices, as the board finds necessary;

52 (ii) file periodic reports containing information relating to the rate, period of emission,
53 and composition of the air contaminant; and

54 (iii) provide access to records relating to emissions which cause or contribute to air
55 pollution;

56 (d) implementing 15 U.S.C.A. 2601 et seq. Toxic Substances Control Act, Subchapter
57 II - Asbestos Hazard Emergency Response, and reviewing and approving asbestos management
58 plans submitted by local education agencies under that act;

59 (e) establishing a requirement for a diesel emission opacity inspection and maintenance
60 program for diesel-powered motor vehicles;

61 (f) implementing an operating permit program as required by and in conformity with
62 Titles IV and V of the federal Clean Air Act Amendments of 1990;

63 (g) establishing requirements for county emissions inspection and maintenance
64 programs after obtaining agreement from the counties that would be affected by the
65 requirements;

66 (h) with the approval of the governor, implementing in air quality nonattainment areas
67 employer-based trip reduction programs applicable to businesses having more than 100
68 employees at a single location and applicable to federal, state, and local governments to the
69 extent necessary to attain and maintain ambient air quality standards consistent with the state
70 implementation plan and federal requirements under the standards set forth in Subsection (2);
71 [and]

72 (i) implementing lead-based paint remediation training, certification, and performance
73 requirements in accordance with 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,
74 Subchapter IV -- Lead Exposure Reduction, Sections 402 and 406[-];

75 (j) establishing standards for purposes of the tax credits allowed by Section 59-7-614.2
76 for:

77 (i) biodiesel; or

78 (ii) syngas; and

79 (k) providing written verification that a facility that seeks to claim a tax credit:

80 (i) in accordance with Subsection 59-7-614.2(3) produces biodiesel as defined in
81 Section 59-7-614.2; or

82 (ii) in accordance with Subsection 59-7-614.2(4) produces syngas as defined in Section
83 59-7-614.2.

84 (2) When implementing Subsection (1)(h) the board shall take into consideration:

85 (a) the impact of the business on overall air quality; and

86 (b) the need of the business to use automobiles in order to carry out its business
87 purposes.

88 (3) The board may:

89 (a) hold hearings relating to any aspect of or matter in the administration of this chapter

90 and compel the attendance of witnesses and the production of documents and other evidence,
91 administer oaths and take testimony, and receive evidence as necessary;

92 (b) issue orders necessary to enforce the provisions of this chapter, enforce the orders
93 by appropriate administrative and judicial proceedings, and institute judicial proceedings to
94 secure compliance with this chapter;

95 (c) settle or compromise any civil action initiated to compel compliance with this
96 chapter and the rules made under this chapter;

97 (d) secure necessary scientific, technical, administrative, and operational services,
98 including laboratory facilities, by contract or otherwise;

99 (e) prepare and develop a comprehensive plan or plans for the prevention, abatement,
100 and control of air pollution in this state;

101 (f) encourage voluntary cooperation by persons and affected groups to achieve the
102 purposes of this chapter;

103 (g) encourage local units of government to handle air pollution within their respective
104 jurisdictions on a cooperative basis and provide technical and consultative assistance to them;

105 (h) encourage and conduct studies, investigations, and research relating to air
106 contamination and air pollution and their causes, effects, prevention, abatement, and control;

107 (i) determine by means of field studies and sampling the degree of air contamination
108 and air pollution in all parts of the state;

109 (j) monitor the effects of the emission of air contaminants from motor vehicles on the
110 quality of the outdoor atmosphere in all parts of this state and take appropriate action with
111 respect to them;

112 (k) collect and disseminate information and conduct educational and training programs
113 relating to air contamination and air pollution;

114 (l) advise, consult, contract, and cooperate with other agencies of the state, local
115 governments, industries, other states, interstate or interlocal agencies, the federal government,
116 and with interested persons or groups;

117 (m) consult, upon request, with any person proposing to construct, install, or otherwise
118 acquire an air contaminant source in the state concerning the efficacy of any proposed control
119 device, or system for this source, or the air pollution problem which may be related to the
120 source, device, or system, but a consultation does not relieve any person from compliance with

121 this chapter, the rules adopted under it, or any other provision of law;

122 (n) accept, receive, and administer grants or other funds or gifts from public and
123 private agencies, including the federal government, for the purpose of carrying out any of the
124 functions of this chapter;

125 (o) require the owner and operator of each new source which directly emits or has the
126 potential to emit 100 tons per year or more of any air contaminant or the owner or operator of
127 each existing source which by modification will increase emissions or have the potential of
128 increasing emissions by 100 tons per year or more of any air contaminant, to pay a fee
129 sufficient to cover the reasonable costs of:

130 (i) reviewing and acting upon the notice required under Section 19-2-108; and

131 (ii) implementing and enforcing requirements placed on the sources by any approval
132 order issued pursuant to notice, not including any court costs associated with any enforcement
133 action;

134 (p) assess and collect noncompliance penalties as required in Section 120 of the federal
135 Clean Air Act, 42 U.S.C. Sec. 7420;

136 (q) meet the requirements of federal air pollution laws;

137 (r) establish work practice, certification, and clearance air sampling requirements for
138 persons who:

139 (i) contract for hire to conduct demolition, renovation, salvage, encapsulation work
140 involving friable asbestos-containing materials, or asbestos inspections;

141 (ii) conduct work described in Subsection (3)(r)(i) in areas to which the general public
142 has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard
143 Emergency Response Act of 1986;

144 (iii) conduct asbestos inspections in facilities subject to 15 U.S.C.A. 2601 et seq.,
145 Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or

146 (iv) conduct lead paint inspections in facilities subject to 15 U.S.C.A. 2601 et seq.,
147 Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;

148 (s) establish certification requirements for persons required under 15 U.S.C.A. 2601 et
149 seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to
150 be accredited as inspectors, management planners, abatement project designers, asbestos
151 abatement contractors and supervisors, or asbestos abatement workers;

152 (t) establish certification requirements for asbestos project monitors, which shall
153 provide for experience-based certification of persons who, prior to establishment of the
154 certification requirements, had received relevant asbestos training, as defined by rule, and had
155 acquired at least 1,000 hours of experience as project monitors;

156 (u) establish certification procedures and requirements for certification of the
157 conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the
158 tax credit granted in Section 59-7-605 or 59-10-1009;

159 (v) establish a program to certify private sector air quality permitting professionals
160 (AQPP), as described in Section 19-2-109.5; and

161 (w) establish certification requirements for persons required under 15 U.S.C.A. 2601 et
162 seq., Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited as
163 inspectors, risk assessors, supervisors, project designers, or abatement workers.

164 (4) Any rules adopted under this chapter shall be consistent with provisions of federal
165 laws, if any, relating to control of motor vehicles or motor vehicle emissions.

166 (5) Nothing in this chapter authorizes the board to require installation of or payment for
167 any monitoring equipment by the owner or operator of a source if the owner or operator has
168 installed or is operating monitoring equipment that is equivalent to equipment which the board
169 would require under this section.

170 Section 2. Section **19-2-105** is amended to read:

171 **19-2-105. Duties of board.**

172 (1) The board, in conjunction with the governing body of each county identified in
173 Section 41-6a-1643 and other interested parties, shall perform an evaluation of the inspection
174 and maintenance program developed under Section 41-6a-1643 including issues relating to:

175 [~~1~~] (a) the implementation of a standardized inspection and maintenance program;

176 [~~2~~] (b) out-of-state registration of vehicles used in Utah;

177 [~~3~~] (c) out-of-county registration of vehicles used within the areas required to have an
178 inspection and maintenance program;

179 [~~4~~] (d) use of the farm truck exemption;

180 [~~5~~] (e) mechanic training programs;

181 [~~6~~] (f) emissions standards; and

182 [~~7~~] (g) emissions waivers.

- 183 (2) The board shall provide written verification:
- 184 (a) to a facility that seeks to claim a tax credit in accordance with Subsection
- 185 59-7-614.2(3), that the facility produces biodiesel as defined in Section 59-7-614.2 if the board
- 186 determines that the facility produces biodiesel; or
- 187 (b) to a facility that seeks to claim a tax credit in accordance with Subsection
- 188 59-7-614.2(4), that the facility produces syngas as defined in Section 59-7-614.2 if the board
- 189 determines that the facility produces syngas.

190 Section 3. Section **59-7-614.2** is enacted to read:

191 **59-7-614.2. Definitions -- Tax credits for biodiesel production facility, production**

192 **of biodiesel, or production of syngas -- Rulemaking authority.**

193 (1) As used in this section:

194 (a) "Biodiesel" means a renewable diesel fuel:

195 (i) derived from biomass;

196 (ii) intended for use in a diesel engine; and

197 (iii) that meets standards established by rule by the Air Quality Board in accordance

198 with Section 19-2-104.

199 (b) "Biodiesel production facility" means a facility that is:

200 (i) located in this state; and

201 (ii) primarily used to produce biodiesel.

202 (c) "Biomass" means any of the following that is used as the primary source of energy

203 to produce biodiesel:

204 (i) material from a plant or tree; or

205 (ii) other organic matter that is available on a renewable basis.

206 (d) (i) "Gasification" means a process that:

207 (A) converts any organic matter into syngas;

208 (B) uses:

209 (I) heat; and

210 (II) pressure; and

211 (C) may use:

212 (I) hydrogen;

213 (II) oxygen, including;

214 (Aa) air;
215 (Bb) pure oxygen; or
216 (Cc) steam; or
217 (III) a combination of Subsections (1)(d)(i)(C)(I) and (II).
218 (ii) "Gasification" includes hydrogasification.
219 (e) "Syngas" means a synthesis gas that:
220 (i) consists primarily of:
221 (A) carbon monoxide; and
222 (B) hydrogen;
223 (ii) is produced using gasification;
224 (iii) is used in a diesel engine; and
225 (iv) meets the standards established by rule by the Air Quality Board in accordance
226 with Section 19-2-104.
227 (2) Subject to Subsection (5), for taxable years beginning on or after January 1, 2008, a
228 taxpayer that pays for the cost of the construction or remodel of a biodiesel production facility
229 may claim a nonrefundable tax credit equal to 10% of the cost of that construction or remodel.
230 (3) Subject to Subsections (5) and (6), for taxable years beginning on or after January
231 1, 2008, a taxpayer that produces biodiesel at a biodiesel production facility may claim a
232 nonrefundable tax credit equal to the product of:
233 (a) the number of gallons of biodiesel that the taxpayer produces; and
234 (b) \$.25.
235 (4) Subject to Subsections (5) and (6), for taxable years beginning on or after January
236 1, 2008, a taxpayer that produces syngas in this state may claim a nonrefundable tax credit
237 equal to the product of:
238 (a) the number of gallons of syngas that the taxpayer produces; and
239 (b) \$.25.
240 (5) (a) Before a taxpayer may claim a tax credit under Subsection (3) or (4), the
241 taxpayer shall obtain written verification from the Air Quality Board in accordance with
242 Section 19-2-105 that:
243 (i) for a taxpayer seeking to claim a tax credit in accordance with Subsection (3), that
244 the taxpayer produces biodiesel; or

245 (ii) for a taxpayer seeking to claim a tax credit in accordance with Subsection (4), that
246 the taxpayer produces syngas.

247 (b) A taxpayer that obtains written verification from the Air Quality Board in
248 accordance with Subsection (5)(a) shall retain that written verification.

249 (6) (a) Subject to Subsections (6)(b) and (c):

250 (i) a tax credit under Subsection (2) may be claimed for the taxable year in which the
251 biodiesel production facility is completed and placed into service;

252 (ii) a tax credit under Subsection (3) may be claimed for the taxable year in which the
253 biodiesel is produced; and

254 (iii) a tax credit under Subsection (4) may be claimed for the taxable year in which the
255 syngas is produced.

256 (b) Subject to Subsection (6)(c), if the amount of a tax credit allowed under this section
257 exceeds a taxpayer's tax liability under this chapter for a taxable year, the amount of the tax
258 credit exceeding the tax liability may be carried forward for a time period that does not exceed
259 the next three taxable years.

260 (c) The total amount of tax credit that a taxpayer may claim or carry forward under this
261 section for a taxable year may not exceed \$1,000,000.

262 **Section 4. Effective date.**

263 This bill takes effect for taxable years beginning on or after January 1, 2008.

Legislative Review Note
as of 1-29-07 4:51 PM

Office of Legislative Research and General Counsel

Fiscal Note**H.B. 161 - Corporate Franchise and Income Tax Credits Relating to Biodiesel
or Syngas Production**

2007 General Session

State of Utah

State Impact

Enactment of this bill could reduce the Education Fund by \$1,000,000 beginning in FY 2009. The Department of Environmental Quality would require an appropriation of \$7,300 to implement the provisions of the bill.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$7,300	\$7,300	\$0	\$0	\$0
Education Fund	\$0	\$0	\$0	\$0	\$0	(\$1,000,000)
Total	\$0	\$7,300	\$7,300	\$0	\$0	(\$1,000,000)

Individual, Business and/or Local Impact

Enactment of this bill will benefit biodiesel and Syngas fuel producers.