

Representative Michael E. Noel proposes the following substitute bill:

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: Howard A. Stephenson

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides nonrefundable tax credits for:
 - a portion of the cost of certain equipment or machinery used in a biodiesel production facility;
 - the production of biodiesel fuel; or
 - the conversion of syngas into diesel fuel;
- ▶ 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;
- ▶ requires the Air Quality Board to provide a written verification to a taxpayer for



26 purposes of the tax credits, except for the tax credit for machinery or equipment; and
27 ▶ makes technical changes.

28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

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

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **19-2-104**, as last amended by Chapter 223, Laws of Utah 2006

35 **19-2-105**, as last amended by Chapter 2, Laws of Utah 2005

36 ENACTS:

37 **59-7-614.2**, Utah Code Annotated 1953



38
39 *Be it enacted by the Legislature of the state of Utah:*

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

41 **19-2-104. Powers of board.**

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

43 Administrative Rulemaking Act:

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

47 (b) establishing air quality standards;

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

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

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

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

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

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

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

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

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

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

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

75 (i) biodiesel; or

76 (ii) diesel fuel converted from syngas; and

77 (k) providing the written verification required by Section 19-2-105.

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

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

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

82 (3) The board may:

83 (a) hold hearings relating to any aspect of or matter in the administration of this chapter
84 and compel the attendance of witnesses and the production of documents and other evidence,
85 administer oaths and take testimony, and receive evidence as necessary;

86 (b) issue orders necessary to enforce the provisions of this chapter, enforce the orders
87 by appropriate administrative and judicial proceedings, and institute judicial proceedings to

88 secure compliance with this chapter;

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

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

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

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

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

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

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

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

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

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

111 (m) consult, upon request, with any person proposing to construct, install, or otherwise
112 acquire an air contaminant source in the state concerning the efficacy of any proposed control
113 device, or system for this source, or the air pollution problem which may be related to the
114 source, device, or system, but a consultation does not relieve any person from compliance with
115 this chapter, the rules adopted under it, or any other provision of law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

165 **19-2-105. Duties of board.**

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

169 [~~1~~] (a) the implementation of a standardized inspection and maintenance program;

170 [~~2~~] (b) out-of-state registration of vehicles used in Utah;

171 [~~3~~] (c) out-of-county registration of vehicles used within the areas required to have an
172 inspection and maintenance program;

173 [~~4~~] (d) use of the farm truck exemption;

174 [~~5~~] (e) mechanic training programs;

175 [~~6~~] (f) emissions standards; and

176 [~~7~~] (g) emissions waivers.

177 (2) (a) As used in this Subsection (2):

178 (i) "Biodiesel" is as defined in Section 59-7-614.2.

179 (ii) "Diesel fuel" is as defined in Section 59-7-614.2.

180 (iii) "Syngas" is as defined in Section 59-7-614.2.

181 (b) The board shall provide written verification to a facility that seeks to claim a tax
182 credit in accordance with:

183 (i) Subsection 59-7-614.2(3), that the facility:

184 (A) meets the standards for biodiesel established by rule made in accordance with

185 Section 19-2-104 if the board determines that the facility meets those standards; and

186 (B) produces biodiesel if the board determines that the facility produces biodiesel; or

187 (ii) Subsection 59-7-614.2(4), that the facility:

188 (A) meets the standards for diesel fuel converted from syngas established by rule made

189 in accordance with Section 19-2-104 if the board determines that the facility meets those

190 standards; and

191 (B) converts syngas into diesel fuel if the board determines that the facility converts

192 syngas into diesel fuel.

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

194 **59-7-614.2. Definitions -- Tax credits for biodiesel production facility, production**
195 **of biodiesel, or production of syngas -- Rulemaking authority.**

196 (1) As used in this section:

197 (a) "Base production amount" means:

198 (i) for the production of biodiesel, the first 1,000 gallons of biodiesel a taxpayer

199 produces in this state for the taxable year for which the taxpayer claims a tax credit under

200 Subsection (3); or

201 (ii) for the conversion of syngas into diesel fuel, the first 1,000 gallons of diesel fuel

202 the taxpayer converts from syngas in this state for the taxable year for which the taxpayer

203 claims a tax credit under Subsection (4).

204 (b) "Biodiesel" means a renewable diesel fuel:

205 (i) derived from biomass; and

206 (ii) intended for use in a diesel engine.

207 (c) "Biodiesel production facility" means a facility that is:

208 (i) located in this state; and

209 (ii) primarily used to produce biodiesel.

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

211 to produce biodiesel:

212 (i) material from a plant or tree; or
213 (ii) other organic matter that is available on a renewable basis.
214 (e) "Diesel fuel" is as defined in Section 59-13-102.
215 (f) (i) "Gasification" means a process that:
216 (A) converts any organic matter into syngas;
217 (B) uses:
218 (I) heat; and
219 (II) pressure; and
220 (C) may use:
221 (I) hydrogen;
222 (II) oxygen, including:
223 (Aa) air;
224 (Bb) pure oxygen; or
225 (Cc) steam; or
226 (III) a combination of Subsections (1)(f)(i)(C)(I) and (II).
227 (ii) "Gasification" includes hydrogasification.
228 (g) "Qualifying tangible personal property" means:
229 (i) equipment;
230 (ii) machinery; or
231 (iii) a combination of Subsections (1)(g)(i) and (ii).
232 (h) "Syngas" means a synthesized gas that:
233 (i) consists primarily of:
234 (A) carbon; and
235 (B) hydrogen;
236 (ii) is produced using gasification; and
237 (iii) is used in a diesel engine.
238 (2) Subject to Subsection (6), for taxable years beginning on or after January 1, 2008, a
239 taxpayer that pays for the cost of qualifying tangible personal property used in a biodiesel
240 production facility may claim a nonrefundable tax credit equal to 10% of the purchase price of
241 that qualifying tangible personal property.
242 (3) Subject to Subsections (5) and (6), for taxable years beginning on or after January

243 1, 2008, a taxpayer that produces biodiesel at a biodiesel production facility may claim a
244 nonrefundable tax credit equal to the product of:

245 (a) the difference between:

246 (i) the number of gallons of biodiesel that the taxpayer produces in this state for the
247 taxable year for which the taxpayer claims a tax credit under this section; and

248 (ii) the base production amount; and

249 (b) \$.15.

250 (4) Subject to Subsections (5) and (6), for taxable years beginning on or after January

251 1, 2008, a taxpayer that converts syngas into diesel fuel in this state may claim a nonrefundable
252 tax credit equal to the product of:

253 (a) the difference between:

254 (i) the number of gallons of diesel fuel that the taxpayer converts from syngas in this
255 state for the taxable year for which the taxpayer claims a tax credit under this section; and

256 (ii) the base production amount; and

257 (b) \$.15.

258 (5) (a) Before a taxpayer may claim a tax credit under Subsection (3) or (4), the
259 taxpayer shall obtain written verification from the Air Quality Board in accordance with
260 Section 19-2-105:

261 (i) for a taxpayer seeking to claim a tax credit in accordance with Subsection (3), that
262 the taxpayer:

263 (A) meets the standards for biodiesel established by the Air Quality Board by rule
264 made in accordance with Section 19-2-104; and

265 (B) produces biodiesel; or

266 (ii) for a taxpayer seeking to claim a tax credit in accordance with Subsection (4), that
267 the taxpayer:

268 (A) meets the standards for diesel fuel converted from syngas established by the Air
269 Quality Board by rule made in accordance with Section 19-2-104; and

270 (B) converts syngas into diesel fuel.

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

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

274 (i) a tax credit under Subsection (3) may be claimed for the taxable year in which the
275 biodiesel is produced; or

276 (ii) a tax credit under Subsection (4) may be claimed for the taxable year in which the
277 diesel fuel is converted from syngas.

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

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

284 Section 4. **Effective date.**

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

Fiscal Note

H.B. 161 2nd Sub. (Gray) - 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.

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

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Enactment of this bill will benefit biodiesel and Syngas fuel producers.
