F I S C A L   I M P A C T   R E P O R T

SPONSOR Small/Ortiz y Pino **ORIGINAL DATE** 1/27/17 **LAST UPDATED** 2/28/17 **HB** 245/aHTPWC

SHORT TITLE Biodiesel Standards Suspension **SB**

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19	FY20	FY21		
$0.0	$0.0	$0.0	$0.0	$0.0	Recurring	State Road Fund

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$400.0		$400.0	Nonrecurring	General Fund
Total		$88.0	$137.1	$225.1	Recurring	General Fund
3 Year Total		$488.0	$137.1	$625.1	Recurring/Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB360 and SB368

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Department of Agriculture (NMDA)
Energy, Minerals and Natural Resources (EMNRD) on original bill.

SUMMARY

Synopsis of Amended Bill

HSTPWC committee amendments to House Bill 245 establish a measureable criterion for the director to apply in enforcing the five percent biodiesel mandate rather than waiving the requirement as he has done since original enactment in 2010. This criterion is that a plant were to be built in New Mexico with a capacity of 15 million gallons and that this plant would begin delivering fuel by December 1, 2019. Other essentially technical amendments are made that would have the effect of comparing price and quantity on an annual aggregate basis rather than on an "all" fuel basis.

Synopsis of Original Bill

House Bill 245 amends the Petroleum Products Standards Act, Sections 57-19-28 and -29 NMSA 1978 that established a biodiesel mandate first for diesel fuel sold to public agencies after July 1, 2010 and then to all consumers after July 1, 2012. Both requirements could be temporarily suspended by the Director of the New Mexico Department of Agriculture.

The provisions of the bill amend the director's authority regarding the biodiesel standards, it reduces the amount of time allowed for the suspension of the biodiesel mandate from six months to 60 days, although this suspension can be repeated indefinitely.

HB 245 requires all diesel fuels sold to state agencies, political subdivisions of the state and public schools and for all diesel fuel sold to consumers to contain yearly, on an aggregate basis, five percent biodiesel. Currently, Section 57-19-29 provides that all diesel fuel sold shall contain five percent biodiesel. It is not based on an aggregate basis during the year.

FISCAL IMPLICATIONS

No fiscal impact to EMNRD or to the State Road Fund directly. It is expected that the NMDA will continue to suspend the 5 percent biodiesel requirement, if only because the fuels testing laboratory is not adequately equipped to test biodiesel or biodiesel blends.

If the industry proposed to use a conventional soy-oil base, then in the absence of a federal $1 per gallon tax credit, there could be an increase in the pump price of the five percent biodiesel blend. Using average component prices in an Iowa study,[1] LFC staff calculate that implementing the mandate in New Mexico would increase diesel prices at the pump by $.09 per gallon. This is probably an insignificant increase for all state agencies except for the School Transportation budget and contract and direct costs of road construction and maintenance. However, LFC was unable to determine what biodiesel production costs in New Mexico would be. Very little soybean oil is produced in the state, nor very much methanol. Both of these substances are essential in the conventional production of biodiesel. While it might be possible to truck biodiesel produced in Iowa into New Mexico, this would increase the costs per gallon significantly.

Proponents of this bill argue that an alternative source of biodiesel is the reprocessing of salvage cooking oil used and discarded by the fast food industry in the state. One company is building a 20 to 25 million reprocessing plant in Texas near El Paso. For every week of 2016, the net price of alternative sourced biodiesel averaged about $.80 per gallon less than petroleum based diesel. However, buried in that performance is a $1 per gallon federal tax credit that expired December 31, 2016. For the first two or three weeks of 2017, biodiesel prices spiked to $.25 per gallon greater than petroleum based biodiesel as producers lost the $1 per gallon tax credit. Since then, biodiesel is exactly the same to slightly less costly than petroleum based diesel.

The amendments propose a compromise, encouraging NMDA to enforce the mandate if the industry promised to build a plant in New Mexico with a capacity of 15,000,000 gallons and that plant would begin delivery of biodiesel by December 1, 2019. If the industry failed to build this capacity, then the director would have adequate reason to waive the mandate until and unless the capacity were built. This compromise seems to resolve a "chicken and egg" problem. The

[1] www.agmrc.org/.../**biodiesel**/**biodiesel**-economics-**costs**-tax-credits-and-co-product/

capacity will not be developed without a virtually guaranteed market. The NMDA would not suspend the mandate without the developed capacity. The best estimate is that the state requires 500,000,000 gallons of diesel annually. Five percent of this is a 25,000,000 gallon demand. Thus, a promise of an in-state 15,000,000 gallon capacity is significant.

Depending on whether the fast-food source resulted in a product that was price-competitive with petroleum-based diesel, the ultimate price to the user of bio-diesel would have to be within $.02 or $.03 per gallon of the regular diesel price. The vast bulk of the market for diesel is the long-haul trucking industry. These heavy transport trucks carry 125 to 300 gallons of diesel fuel, good for 600 to 3,000 miles between refueling stops. Small differences in wholesale cost (ex-tax) can enhance or diminish the market in any particular state. In particular, Missouri and Oklahoma among our neighboring state usually have the lowest diesel fuel prices in the Midwest and Rocky Mountain region.

If a total of 15,000,000 gallon capacity is not delivered, then the director will suspend the mandate and will provide a written determination every 60 days. Even if the capacity is developed, the director could argue that prices are not competitive or that quality could not be determined.

If the mandate is implemented, the state gains the capital expenditure and highly paid jobs in the processing plant. The truckers will be effectively held harmless because prices will have to be competitive and amounts deliver adequate. It is assumed that if the in-state plants deliver 15 million gallons, then the Texas plant will deliver the remaining 10,000,000 gallons.

SIGNIFICANT ISSUES

HTPWC committee amendments to House Bill 245 quantify a condition that would allow the director to honor the five percent biodiesel mandate. Section 2 of the bill as amended reinstates a five percent biodiesel mandate and changes the requirement from “all diesel fuel sold …” to “Yearly on an aggregate basis.” Section 57-19-29 NMSA 1978 (section 2 of the bill) requires the NMDA to test the fuel for quality, although this requirement is generic and not specific to biodiesel. The Petroleum Products Standards Act refers to test methods certified by the American Society for Testing and Materials (ASTM). The NMDA interprets this quality section to imply that if they are unable to certify the quality of the biodiesel then it must waive the mandate. It is unknown if biodiesel testing requires different equipment or procedures compared to testing petroleum based diesel pursuant to the provisions of the petroleum Products Standards Act. In fact, the biodiesel mandate does not really belong in a section of statute devoted to quality, The quality testing directive of the A. paragraph of Section 57-19-29 NMSA 1978 is not logically related to biodiesel mandate of the B and C paragraphs of the section. NMDA’s insistence that it cannot honor the five percent diesel mandate because it does not have the gas chromatographs necessary to determine the quality of the biodiesel may not be warranted.

Since enactment of the law in 2010, apparently the Director of the New Mexico Department of Agriculture (Director), in consultation with the Secretary of Energy, Minerals and Natural Resources, has exercised the authority to waive the mandate on the basis of price differential or failure of the industry to demonstrate that adequate amounts of biodiesel are available.

Apparently, the industry is attempting to negotiate a compromise whereby if a plant in is built in New Mexico with a capacity of at least 15 million gallons and that that plant would begin delivering fuel by December 2019, then the director would enforce the mandate for at least 60 days. of the estimated required 25 million gallons of biodiesel would be produced in a plant in New Mexico

EMNRD notes, "… since 2010, the New Mexico Department of Agriculture in consultation with the Energy, Minerals and Natural Resources Department has suspended the mandate every six months. With HB 245 allowing for the yearly aggregation of the five percent biodiesel mandate this may assist with implementation and compliance efforts and allow the mandate to be implemented."

If this mandate were met with biodiesel trucked in from Iowa, then there would be virtually no reason to implement the mandate, since it would ultimately simply export New Mexican's funds to another state. If, however, there were a significant New Mexico small- and large-scale production capacity, then this mandate could be considered economic development.

PERFORMANCE IMPLICATIONS

NMDA has concerns regarding its ability to manage the changes proposed in this bill: "… changing the maximum suspension time from six (6) months to sixty (60) days will require the department to incur additional work hours in a shorter period of time to compile sufficient data on price differentials and availability."

"The petroleum products standards laboratory lacks laboratory equipment to analyze biodiesel and biodiesel blends for cold weather performance requirements. Projected costs to the department to purchase equipment is approximately four hundred thousand dollars ($400.0). Additionally, there will be recurring costs to the department as the equipment becomes obsolete, nonfunctioning, or requires maintenance."

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The consequences of not enacting this bill would be that the biodiesel mandate may continue to be temporarily suspended and not be implemented in the state.

CONFLICTS, COMPANIONS, DUPLICATES

Relates to HB 360 Five Percent Biodiesel Standards and SB 368 Five Percent Biodiesel Standards.

AMENDMENTS

NMDA requests consideration of three amendments to ease administrative concerns:

Page 1, Lines 11-13: Relating to petroleum products; allowing biodiesel standards to be suspended for up to ~~sixty days~~ six months and to be met on a yearly aggregate basis.

Page 3, Lines 19-21: requirements for a period of up ~~sixty days~~ six months upon publication of written findings of fact to support the director's determination."

Note: in both cases, NMDA requests retention of the six-month time period for action.

Page 3, under paragraph C, language could be added to obligate the New Mexico taxation and revenue department to provide data to the department of all biodiesel and diesel sales in New Mexico on a monthly basis.

NMDA also would like more direction in determining price differentials.

> Page 3, under paragraph C, language needs to be added to define the method of determining price differentials in the market place using a service such as Oil Price Information Services (OPIS) or similar entity.

However, LFC staff note that this level of detail can be addressed administratively, not statutorily.

LG/jle/sb/al