

million gallons of biodiesel a year. The bill would allow the suspension to last until the 12-million-gallon production target was met. The production threshold would be added to existing criteria that allows the NMDA director to suspend the requirement for six months if biodiesel supplies are insufficient or the price of blended fuel is significantly higher than that for diesel.

The bill would require the EMNRD secretary to agree with the NMDA director before the director could suspend the requirement, while current law calls for the NMDA to only consult with the EMNRD secretary.

The bill would also mandate annual reporting by special fuel suppliers and rack operators – wholesale fuel suppliers where biodiesel and other additives are blended into the base fuel – on the amounts of diesel and biodiesel supplied and requires NMDA, which would promulgate the reporting rules, to compile that information annually and report to the governor and the Legislature by March 25 of each year. The bill would also increase the length of time fuel distributors and retailers must retain records from no more than one year to at least two years.

The effective date is January 1, 2020.

FISCAL IMPLICATIONS

The bill is unlikely to have an immediate impact on the type or cost of fuel used by state and local agencies or public schools, although it is possible it will have an impact if capacity increases and prices drop before the effective date on January 1, 2020.

Since its initial effective date in 2010, the biodiesel requirement has been suspended every six months, and the mandate has never been imposed. Insufficient supply to meet the 5 percent biodiesel requirement has been emphasized in NMDA reports justifying the suspensions, and estimates based on NMDA figures suggest supply is insufficient to meet the 3 percent requirement as well.

Biodiesel: Gallons Sold Versus Gallons Required To Meet 5 Percent Mandate			
	Aggregate Biodiesel Gallons Reported	Biodiesel Gallons Required	
2018			
January	1,929,099	2,191,896	
February	1,198,217	2,089,915	
March	2,016,727	2,424,783	
April	1,086,803	2,199,597	
May	1,310,186	2,279,245	
June	534,000	1,890,335	
July	840,945	2,327,863	
August	902,460	2,435,242	
September	1,588,318	2,354,619	
9-month total	11,406,755	20,193,495	
Estimated Annual Total (monthly average x 12)	15,209,006	26,924,660	56% of need met under 5% requirement
Estimated need at 3 percent [(need at 5%)/.05 x .03]		17,946,667	2018 supply would have met 76% of need

Source: Suspension Letter from NMDA Sec. Jeff Witte to EMNRD Sec. Ken McQueen, Dec. 6, 2018

In addition, the NMDA secretary reported in December 2018, in his letter to the EMNRD secretary justifying the current six-month suspension, the biodiesel price differentials would be a burden on consumers:

[The] Oil Price Information Service (OPIS) and the United States Department of Energy both are reporting price differentials that will negatively affect the consumer in New Mexico. Pricing data from OPIS from the Albuquerque and El Paso markets for 2018 show a price differential between diesel and biodiesel, the same trend is mirrored by the United State Department of Energy report.

Whether or not the biodiesel requirement is suspended, NMDA will need staff and facilities for the administrative functions required by the bill. The department reports the bill would require it to develop and maintain a database, evaluate the data, and report on diesel and biodiesel supplied to the New Mexico market by 220 special fuel suppliers, and that responsibility would require 1 FTE. In addition, the NMDA says it would need laboratory equipment, at a cost of \$430 thousand, to analyze biodiesel and biodiesel blends for cold weather performances against fuel standards set by ASTM International, formerly known as American Society for Testing and Materials, and \$70 thousand a year for maintenance of the testing equipment and consumables used in testing. NMSA says it would also need to employ a chemist to conduct the analysis at a cost of \$65 thousand a year. With an effective date of January 1, 2020, the bill would impact only six months of the FY20, at least halving the department's estimate.

SIGNIFICANT ISSUES

Enacted in 2007, the biodiesel legislation required state agencies, political subdivisions, and public schools to adopt the 5 percent standard by 2010 and for all commercial sales to meet the 5 percent standard by 2012, but the suspensions have prevented the mandates from going into effect. At least two legislative attempts to revoke the mandate have failed, as have several other efforts to amend the law. The continuous suspensions have been justified by high prices and limited availability, particularly during the winter when cold weather thickens the biodiesel and makes it difficult to blend.

Currently, EMNRD reports New Mexico has no production facilities for biodiesel. EMNRD indicates the closest production facility is in El Paso, Texas. Rio Valley Biofuels, which news stories sometimes report as being located in Anthony, N.M., even though it has an El Paso business address, reports it produces 16 million to 17 million gallons of biodiesel a year.

However, the in-state production threshold of 12 million gallons might never be a factor in a suspension if availability and price, which would remain conditions under which a six-month suspension can be invoked, do not improve.

NMDA says a biannual survey of the fuel industry indicates neither New Mexico nor out-of-state supply points have enough capacity to blend enough biodiesel to meet the 5 percent requirement. However, it also reports the survey shows about two-thirds of New Mexico supply points and three-quarters of out-of-state supply points have blending capability.

According to LFC analysis of 2017 legislation (HB360), while New Mexico has no production facilities, several diesel suppliers can blend biodiesel fuel during part of the year. Higher blends during warmer months could help the state reach the aggregate percentage.

Of note, NMDA data indicates New Mexico would need nearly 27 million gallons of biodiesel

this year to meet the 5 percent mandate and need grows about 6 percent a year, putting the 2022 figure for need at about 33.5 million, almost three times the production threshold set for 2022.

ADMINISTRATIVE IMPLICATIONS

NMDA would need additional staff to develop and maintain the reporting system and additional staff to operate additional necessary laboratory equipment. Long term, the department says increased workload for its petroleum laboratory could increase the need for staff. It notes space in the laboratory is limited.

TECHNICAL ISSUES

EMNRD notes the bill provides that rules will be adopted by the Department of Agriculture; however, Section 57-19-28 grants general rulemaking authority under the Petroleum Products Standards Act to the board of regents of New Mexico State University.

In addition, the language in the bill that requires the NMDA director to determine whether plants permitted by January 1, 2022, have the capacity to produce 12 million gallons of biodiesel a year is open to interpretation.

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