

Ruben R. Baca
May 5, 2013

New Mexico Notes

The 2013 60-Day Legislative Session came to an end on March 16th at noon. This 60-day session, the Legislature set a record for the least amount of bills introduced as there were only 675 House Bills and 642 Senate Bills.

The list of bills that affect our industry:

There were 14 Bills that were introduced that would create new liquor licenses; this will continue to be a trend because of the lack of licenses and the prices exceeding \$700,000 per license.

HB 506 - creates a new liquor license, the Special Bed and Breakfast Dispensing License. A special bed and breakfast dispensing license may be issued to an owner or operator of a bed and breakfast. The license is limited to the serving of wine and beer in conjunction with food to the number of guests of the bed and breakfast. The fee for the special bed and breakfast dispensing license is of one hundred dollars (\$100). A license shall be valid for one year from the date that it is issued and may be renewed for a fee of one hundred dollars (\$100). The bill permits bed and breakfast staff who hold a server permit to dispense only wine or beer to guests of the bed and breakfast in conjunction with the serving of food in a common area of the bed and breakfast. The issuance of a license is contingent on the approval of the local public governing body or local option district of the jurisdiction in which the business is domiciled. Service of beer or wine with food to guests at a bed and breakfast is limited to two twelve-ounce servings of beer or two six-ounce servings of wine per guest. The license is not transferable from person to person or from one location to another. The provisions of the Alcohol Server Education Article of the Liquor Control Act must be adhered to. For the purposes of this bill, "bed and breakfast" means a business establishment that offers temporary lodging with meals included and has a guest capacity of twenty or fewer persons. This Bill passed both houses and was signed into law by the Governor.

HB 604 - increases both the gasoline and special fuel taxes by five cents. Beginning in FY2014 the gasoline excise tax will be set at 22 cents per gallon (up from the current 17 cents per gallon) and the special fuel excise tax will be set at 26 cents per gallon (up from the current 21 cents per gallon). This Bill was tabled in House Taxation and Revenue Committee.

HM 10 - requests the New Mexico Legislative Council convene a work group to identify and recommend additional revenue sources for state transportation infrastructure needs. The Legislative Council would invite representatives from the DOT, the Legislature, tribal governments, and local governments to serve on the work group. The Legislative Council would also name additional members whose expertise they believe would contribute to the mission of the work group. The work group would report its recommendations to the interim Revenue Stabilization and tax Policy Committee by October 2013 and provide

copies of its report to the co-chairs of the Legislative Council and the Secretary of Transportation. This Memorial passed.

SB 160 - amends section 7-16A-10 NMSA 1978 (being Laws 1992, Chapter 51, Section 10) to include a deduction in the special fuel excise tax for biodiesel. The bill defines “biodiesel” as a renewable, biodegradable, combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets the American society for testing and materials specifications for biodiesel fuel, B100 or B99 blend stock for distillate fuels. “Blended biodiesel” is defined as diesel engine fuel that contains at least 2 percent biodiesel. The applicability and effective date of this bill is May 1, 2013 provided that prior to May 1, 2013, the provisions of this act are enacted into law. If provisions of this act are not enacted into law prior to May 1, 2013 then the effective date is July 1, 2013. There is no sunset date. The Legislative Finance Committee (LFC) recommends adding a sunset date. This bill contains an emergency clause, and would become effective immediately upon signature by the governor. This Bill was signed by the Governor and is very important to our industry as it removed the dual tax on Bio-Diesel fuel.

SB 259 – proposes the following changes related to liquor control.

- 1. Shortens the period of time, from 5 years to 3 years, during which issued alcohol server permits remain valid. Currently issued permits remain valid until its scheduled expiration, i.e., the bill does not impact currently issued cards.**
- 2. Changes the penalty for a certified server:**
 - a) Who sells or serves alcohol to a minor for the first time to a misdemeanor from a fourth degree penalty;**
 - b) For a second and subsequent offense, that certified server is guilty of a fourth degree felony.**

For offenders who are not certified servers, the offense remains a fourth degree felony. I have tried to pass this Bill for several years and finally the Bill was passed and signed by the Governor.

SB 329 – Adds a new section to the Liquor Control Act that creates the Hotel License. In a local option district that has voted to approve the sale of alcoholic beverages, a license can be issued to an applicant that is qualified under the provisions of the Liquor Control Act subject to the following requirements and restrictions:

A). a hotel licensee shall be allowed to sell beer, wine and spirituous liquors in opened containers for on-premises consumption as well as at wet bars as provided for in Section 60-7B-13 NMSA 1978;

B). a hotel licensee shall be allowed to sell beer, wine and spirituous liquors in the entire hotel facility;

C). the hotel licensee shall have a valid food establishment permit and a commercial kitchen, dining room and the employees necessary to prepare and serve meals, not just fast foods, for consumption on the premises;

D). a hotel license shall not be transferred from person to person or from one location to another;

E). a hotel license shall expire annually and be subject to renewal upon application to the director by the licensee pursuant to Section 60-6B-5 NMSA 1978;

F). sale, service and consumption of alcoholic beverages authorized in this section shall be permitted during the hours set forth in Section 60-7A-1 NMSA 1978; and,

G). the provisions of Section 60-6A-18 NMSA 1978 shall not apply to hotel licenses."

In License Fees, section 60-6A-15 NMSA 1978, the initial hotel license fee is set at \$50,000 and annual renewal \$1,300. This Bill was tabled in Senate Judiciary Committee.

SB 355 – Provides for a dispenser's license that was, prior to July 1, 2013, the subject of an inter-local option district transfer and as a result lost its privilege to sell alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises may apply to regain that package privilege subject to the following conditions:

(1) The method and process for application shall be determined by the director, but shall be substantially the same as for an application for a new license;

(2) No more than twenty-five dispenser's licenses per year may regain the package privilege;

(3) The fee for the issuance of the package privilege is fifty thousand dollars (\$50,000);

(4) if the package privilege is regained and the licensed premises are in a local option district that has voted to approve Sunday package sales, the dispenser may request a permit for Sunday package sales pursuant to Section 60-7A-1 NMSA 1978; and

(5) When it appears to the director that there will be more than twenty-five applications to regain the package privilege in a calendar year, the director shall provide a random selection method for the qualification, approval and issuance of the package privilege.

FISCAL IMPLICATIONS

The fee for reinstating the license is \$50,000 with a basic limit of 25 additions per year. RLD reports 354 dispenser's licenses eligible for the reinstatement of the retailer's permit. This is a potential of \$1.25 million per year until all 354 are reinstated. It is reasonable to assume the pick-up for at least the first couple of years would be the maximum but it would be questionable after that. The bill does not comment on any additional annual fee in subsequent years or if it is included in annual fee of the dispenser's license it rejoined.

SIGNIFICANT ISSUES

It appears the reinstated retailer's privileges are not subject to any quota limitations defined in 60-6A-18 NMSA 1978, effectively increasing the number of retail licenses and therefore, the number of package liquor outlets. This Bill was tabled in Senate Corporations Committee.

Because of the large number of Bills relating to liquor licenses, SM 77 was introduced which requests that the RLD convene a task force to undertake a comprehensive review of the Liquor Control Act and make recommendations to the legislature regarding amendments to update the Liquor Control Act to better meet the needs of the public. The memorial also requests that the task force include representatives from industries covered by the Liquor Control Act, as well as representatives from any other groups that may have an interest in amending the Liquor Control Act. The task force should be geographically diverse to ensure that voices are heard from around the state. This memorial passed the Senate.

SB 374 – would have eliminated the 5% Bio-Diesel requirement in New Mexico. This Bill was tabled in Senate Conservation Committee. However, on May 2nd, the State suspended the 5% mandate for six months and at that time they will review it and evaluate what to do.

SB 527 - amends sections 7-13-3 and 7-16A-3 NMSA 1978 to increase gasoline excise taxes and special fuel excise taxes two cents per year starting in FY20. Beginning in FY25 the bill will index price increases to a chained price index for state and local highway and street investment.

The gasoline excise tax and (special fuels excise tax) imposed shall be:

\$0.17 (\$0.21) per gallon on or before June 30, 2019; \$0.19 (\$0.23) per gallon between July 1, 2019 and June 30, 2020; \$0.21 (\$0.25) per gallon between July 1, 2020 and June 30, 2021; \$0.23 (\$0.27) per gallon between July 1, 2021 and June 30, 2022; \$0.25 (\$0.29) per gallon between July 1, 2022 and June 30, 2023; \$0.27 (\$0.31) per gallon between July 1, 2023 and June 30, 2024.

For both the gasoline excise tax and the special fuels excise tax on and after July 1, 2024, the rate is determined as follows: No later than April 30, 2024 and April 30 of each subsequent year, TRD shall calculate the rate of gasoline tax to be imposed as of July 1 of

that year. The rate of the gasoline excise tax (and the special fuels excise tax) per gallon shall be equal to the product, rounded down to the nearest whole cent, \$0.27 (\$0.31) multiplied by a fraction with a numerator equal to the chained price index for the previous calendar year and a denominator equal to the chained price index for calendar year 2022, where "chained price index" means the chained price index for state and local gross investment in highways and streets. The effective date of this bill is July 1, 2013. This Bill was passed out of Senate Corporations Committee but was never heard in Senate Finance Committee and it died there.

Upcoming Events

The 2013 NMPMA Convention and Trade Show will be held in Albuquerque August 27 and 28, 2013, at the Marriott Pyramid Hotel, 5151 San Francisco Rd NE, 87109. Please mark your calendars.