

2006ARIZONA LEGISLATIVE WRAP-UP

The Arizona Legislature adjourned for the year on June 22, 2006 at 12:12 a.m. following a session lasting 164 days—the fifth longest session in state history. During the session, 1,453 bills were introduced, 438 were passed by the Legislature. Governor Janet Napolitano vetoed 43 bills and signed 395 bills into law. The Legislature will convene for the 2007 session on January 8, 2007 at noon. The general effective date for legislative acts without the emergency clause or specified later dates is September 21, 2006.

Below are summaries of the key bills, and selected regulatory issues, APMA worked on during 2006. If you have any questions regarding this wrap-up or would like a copy of a particular bill or chaptered law, please call Andrea Martincic at (480) 460-1561.

FUELSEthanol E 85/Motor Fuel

HB 2590 (Boone) Ethanol blend E-85 is excluded from the definition of gasoline. Dispensing standards and requirements are listed for producers and retail sellers of these fuels and reporting requirements for fuel producers regarding blends, sales and quality parameters to the Department of Weights & Measures. Retailers are offered liability protection from consumers misfueling if they follow labeling requirements for the product set forth in statute. Removes the requirement that Metro Phoenix and Metro Tucson use gasoline that has not less than 2.7% by weight of oxygen nor more than the maximum percentage of oxygen allowed by waiver or EPA standards if not using a gasoline ethanol blend from November 1 and January 31. **Chapter 98, Laws 2006 (Signed April 11th)**

APMA POSITION: Support. APMA was able to get an amendment which offers retailers liability protection if the E-85 dispenser is properly labeled etc... and a consumer misfuels and places E-85 in a non flex-fuel vehicle.

Compressed Natural Gas; Particulate Program

HB2591 (Boone) This bill is a session law amending Laws 2005, Chapter 232, relating to in-lieu fees and school bus grants. Money in the air quality fund may be continuously appropriated to the Arizona Department of Environmental Quality for the purpose of awarding grants to school districts for the purchase of new school buses with diesel particulate filters, for retrofitting of used school buses with these cleanup filters and for the purchase of buses powered by CNG. Applicants for these grants are directed to respond to DEQ within 90 days of the effective date of this act. New vehicle acquisitions, retrofits and services are to be delivered by June 30, 2008. If the requests for money exceed the funds

available, DEQ shall award available funds pro rata based on the number of schools that apply. Effective May 2, 2006. **Chapter 242, Laws 2006 (Signed May 2nd)**

APMA POSITION: Monitor. APMA wanted to make sure that the bill would not favor CNG powered buses over those using diesel particulate filters.

Tax Incentives; Biodiesel; Ethanol E-85

HB 2711 (Boone) Property used "specifically and solely" to produce ethanol or biodiesel fuel would be classified as class 6 property (for property tax purposes). Class 6 property includes noncommercial historic property, property within a foreign trade zone, enterprise zone or military re-use zone, and property comprising certain qualified environmental technology manufacturing facilities. Class 6 property taxes are levied at 5% of the property's assessed valuation. **Died in Senate Finance 3/30.**

APMA POSITION: Opposed. APMA was opposed to this bill because it offered tax incentives favoring one type of fuel production over others which APMA is historically opposed to.

Supporting Construction; Energy Pipelines

HCR 2048 (Knaperek) states the Arizona Legislatures' support for the construction of natural gas and gasoline products pipelines and an additional high-speed fiber optics communications line in the state. **Passed both House and Senate unanimously and will be filed with the Secretary of State's Office.**

APMA POSITION: Monitor & Support.

Dyed Diesel; Civil Penalties; Liabilities

SB 1099 (Verschoor) would have made changes in the calculation of penalties for violating the prohibition against selling dyed diesel fuel (unless the sale qualifies for a fuel tax exemption). Each officer, agent and employee of an entity subject to penalties is jointly and severally liable with the entity for the penalty. **Bill was withdrawn from Senate Transportation and later became a striker on another topic.**

APMA POSITION: Monitor & Oppose. This bill was proposed by ADOT and the agency did not include APMA in initial discussions. APMA expressed concern over the liability language with the bill sponsor and after subsequent meetings with the stakeholders, the bill was held. ADOT attempted at various points during the session to add this liability language to SB 1445 as well.

Biodiesel Production; Class 6 Property

SB1346 (Huppenthal—Boone strike-everything) According to a stipulated formula, the use of biodiesel satisfies requirements that various governmental entities increase the use of alternative and/or clean-burning fuels in their vehicle fleets. Also for property tax purposes, property used "specifically and solely" to produce fuel that is 100% biodiesel is classified as Class 6 property. Class 6 property includes noncommercial historic property, property within a foreign trade zone, enterprise zone or military re-use zone, and property comprising certain qualified environmental technology manufacturing facilities. Class 6 property taxes are generally calculated at 5% of the property's assessed valuation, whereas other commercial property currently pays taxes on 24% of its net assessed valuation. **Chapter 388, Laws 2006. (Signed June 28th)**

APMA POSITION: Oppose. APMA opposed SB 1346 for the same reasons we opposed HB 2711. Boone was able to get this placed as a striker. The Senate voted on June 21st to fail the bill on final reading by a vote of 10-16, but later the same day reconsidered the bill and passed it 20-8.

Use Fuel Taxes; Civil Penalties

SB 1445 (Verschoor) states that any person purchasing use fuel for use in a vehicle that is not exempt from statutory weight fees and pays the use fuel tax for a light class vehicle, is subject to a civil penalty of the greater of \$1,000 or \$10 for each gallon dispensed in addition to the difference in use fuel tax. Penalties for subsequent violations shall be determined by multiplying this amount by the number of prior violations. Also, there shall be no penalty imposed on the vendor who may request and is entitled to a refund for the improper taxes paid in the purchase. **Chapter 224, Laws 2006 (Signed April 25th)**

APMA POSITION: Support. APMA worked with the sponsor to draft this legislation and spearheaded legislative efforts. APMA worked with a coalition of retailers to make it a civil penalty for a consumer to put diesel fuel taxed at the light duty rate into a heavy duty diesel vehicle. This bill should take the retailer out of "playing cop" for ADOT.

HUMAN RESOURCES

Workers' Comp; Drugs and Alcohol

HB 2111 (McComish) would have deleted the statutory provision stating an employee is not eligible for workers comp if the accident resulted from the employee's use of alcohol or controlled substance. (The statute was declared unconstitutional last year.) If the employer of an injured worker had not established and implemented a drug testing procedure at the time of the accident, the employer has the burden of proof that the employee's use of drugs or alcohol was a "substantial contributing cause" of the accident. Carriers and self-insured employers who deny a claim based solely on the existence of drug

or alcohol use after receiving notice of treatment are liable for costs incurred before the date of denial. Enactment conditional on voter passage of a constitutional amendment authorizing the Legislature to limit or deny workers compensation claims because the worker was impaired due to alcohol or illegal drugs. **Bill was held in Senate Commerce & Economic Development.**

APMA POSITION: Support. OUTLOOK: This bill was supported by a number of businesses and trade associations, but ran into problems in the Senate. Doctors expressed concern about how payment would be made in these circumstances. It is unclear if another attempt will be made next year.

ENVIRONMENT

Hazardous Air Pollutants; De Minimis

SB 1356 (Allen) would have amended statutory provisions relating to de minimis amounts of federally listed hazardous air pollutants to require that standards prescribed by the Department of Environmental Quality be based on "scientifically reliable evidence" of the health or environmental effects of the de minimis amount. "Credible medical and toxicological evidence" that has undergone peer review would have had to have been produced to support the determination of the de minimis amount. Further, the Department would need to have shown the availability of an "adequate and reliable" methodology to quantify the pollutant at the de minimis amount. **Bill passed both the House and Senate, but was vetoed by Governor Napolitano.**

APMA POSITION: Support. This bill was supported by the Arizona State Chamber and a large coalition of businesses. It was an attempt to pass legislation dealing with the issue that industry agreed on, rather than accepting what the ADEQ had quickly forced on industry through an expedited rule process. SB 1356 passed the Legislature but was vetoed by the Governor.

GOVERNOR'S VETO MESSAGE: The bill is in opposition to guidelines recently promulgated by the Department, guidelines which were developed with significant public input over two years. Also, the bill could have been construed to place significant new and unnecessary obstacles in the way of the Department's ability to regulate toxic air pollutants. Finally, a statement in a purpose section of the bill that this legislation would have given the Department authority to adopt de minimis standards "for the first time" is legally inaccurate because the attorney general has stated the Department already possesses that authority.

MARKETING ISSUES

Price Gouging

HB 2827 (Lopes) would have required that a wholesaler or retailer may not increase the price of an essential good or service by more than 10%, during a declared emergency or if a court makes a finding of an "abnormal market disruption" (defined as a significant disruption to the production, distribution or sale of a good or service essential to the health, safety and welfare of the public) Hoarding is also prohibited. Violation is a class 1 (highest). **Bill was assigned to House Commerce and House Government Reform & Government Accountability, but never was heard.**

APMA POSITION: Opposed. OUTLOOK: APMA has been seeing this type of legislation since the Kinder Morgan pipeline break in 2003. This bill was held in Committee and did not have a hearing. The Arizona Attorney General's Office attempted to get Rep. Koponicki to offer a striker to address price gouging but was unable to generate enough support. The Attorney General's Office also threatened to seek some type of price gouging statute by going to the ballot if necessary.

Bad Checks/Felony

SB 1029 (Arzberger) would have made writing a bad check for \$5,000 or more a Class 6 felony (lowest level) if the person does not pay the check (plus interest) within 60 days of receiving notice that the bank has not honored the check. All other bad check offenses remain a Class 1 misdemeanor (highest). **Bill passed out of Senate Judiciary and Senate Commerce & Economic Development, but failed to go to a floor vote in the Senate.**

APMA POSITION: Support. OUTLOOK: Arzberger has run this bill now for three years. Last year it made its way out of the Senate but was held up in the House. NFIB wants the amount lowered and conservative legislators have expressed concern that innocent housewives could be punished under this scenario. The outlook for this legislation is not promising—especially since it didn't go to a floor vote in the Senate this year.