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FISCAL IMPACT REPORT

SPONSOR HJC ORIGINAL DATE 03/12/09
LAST UPDATED _____ HB 485/HJCS
SHORT TITLE Contractor-Owned School Bus Liens SB _____
ANALYST Aguilar

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None Noted		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB-205, HB-191

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 485 provides that a school district shall file a lien on every contractor-owned school bus under the contract on which the contractor owes money. The lien will have priority second only to a lien securing the purchase-money obligation and the lien shall be recorded on the title of the school bus.

The committee substitute further provides that a school bus contractor shall not refinance or use a school bus on which a school district has a lien as collateral for any other loan without prior written permission of the Public Education Department (PED).

CS/HB-485 includes provisions requiring that bus liens be collected and enforced under existing provisions of the Uniform Commercial Code and also includes conditions under which a school district shall release its lien on a school bus.

CS/HB-485 clarifies that contract termination includes non-renewal by either party. If a school district fails to take action to collect money owed to it when a school bus contract is terminated or not renewed, the bill allows the PED to deduct the amount from the school district's transportation distribution.

The provisions of CS/HB-485 will apply to contracts, including contract renewals, entered into on or after June 19, 2009.

FISCAL IMPLICATIONS

None noted, however given the example below this may result in districts saving money when bus contracts are terminated or not renewed.

The most recent case involved a contract non-renewal. The school bus equipment was used to secure a bank loan and was not available for transfer to the district. The district did not take legal action against the contractor for the overpayment due to findings that the contractor appeared to not have the resources to return any overpayment. The district decided to operate the transportation services, resulting in approximately \$1,600,000 in new school bus purchases.

SIGNIFICANT ISSUES

School bus contract terminations or non-renewal of a school bus service contract since 1996 have made it difficult for school districts to collect any overpayment made for rental fees where school buses were not used for the intended 12-year term. In most cases school buses are not transferred to the school district or succeeding contractor, resulting in increased costs to replace necessary school buses.

A recent court case challenged the school district's ability to collect overpayments as a result of a contract non-renewal rather than a contract termination. The school district prevailed in this case; however, full judgment (interest) has not been collected. The contractor did not sell its school buses to the district, resulting in new buses being purchased for the district.

CS/HB-485 provides for additional language to be added to school bus service contracts, requiring the school district to provide documentation to PED that the district has filed a lien on each school bus as provided for in this bill.

The department, by rule, shall establish the parameters of school bus service contracts.

If a school district fails to take action to collect money owed to it when a school bus contract is terminated or not renewed, the bill allows the PED to deduct the amount from the school district's transportation distribution.

The provisions of CS/HB-485 will apply to contracts, including contract renewals, entered into on or after June 19, 2009. Current requirements involve districts finalizing contracts June 20th of each year. The effect of this language will be to delay implementation until school year 2011 when all school buses covered by this bill will have liens in place. It is unclear why this cannot be accomplished for SY2010 as contracts for FY10 are not yet in place.

TECHNICAL ISSUES

The bill provides that "a school bus contractor shall not refinance or use a school bus on which a school district has a lien as collateral for any other loan without prior written permission of the department. It is unclear why the department would give permission rather than the district.

PA/mc:svb