

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 13a

51st Legislature, 2nd Session, 2014

Tracking Number: .195053.2

Short Title: School Equalization Guarantee “Local Revenue”

Sponsor(s): Representatives Sheryl Williams Stapleton and Patricia A. Lundstrom

Analyst: Mark Murphy

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FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AS AMENDED

The House Education Committee (HEC) amendments:

- eliminate the inclusion of taxes levied directly by the school district in the definition of “local revenue”;
- specify that tax revenues that need to be considered as “local revenue” in the *Public School Finance Act* are “noncapital” instead of “operational”; and
- delay the effective date of the provisions of HB 13 from July 1, 2014 to July 1, 2015.

Original Bill Summary:

HB 13 amends the *Public School Finance Act* to:

- expand the definition of local revenue for calculation of a school district’s State Equalization Guarantee (SEG) to include the amount of a tax imposed by a municipality, a county, or a school district and used to provide funding to the school district for any operational purpose; and
- itemize the sources of local revenue into four distinguishable subsections of the “local revenue” definition.

The provisions of HB 13 take effect on July 1, 2014.

Fiscal Impact:

HB 13 does not contain an appropriation.

Fiscal Issues:

By adding another source to the definition of “local revenue” within the *Public School Finance Act*, HB 13 requires the state, in determining SEG distributions, to take credit for 75 percent of any municipal, county, or school district tax that generates revenue that is used for operational expenditures by a local school district.

Current Law

Current provisions of the *Public School Finance Act* state that the term “local revenue” be defined as follows [22-8-25 NMSA 1978]:

“Local Revenue,” as used in this section, means seventy-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents (\$.50) to each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the *Oil and Gas Ad Valorem Production Tax Act* [Chapter 7, Article 32 NMSA 1978] and upon the assessed value of equipment in the school district as determined under the *Oil and Gas Production Equipment Ad Valorem Tax Act* [Chapter 7, Article 34 NMSA 1978].

In determining the SEG distribution amount, this section of the *Public School Finance Act* requires:

- the calculation of local revenues, as defined; and
- the deduction of local revenues from the program cost total.

State Definition vs. Federal Definition

The definition of “local revenue” in the *Public School Finance Act* differs from the definition of “local tax revenues” as stated in the 34 Code of Federal Regulations (CFR) 222.161 pertaining to federal revenue received by New Mexico. This difference would continue to persist if the provisions of HB 13 are enacted. There may be advantages, such as further clarity of what needs to be included in the computation of the SEG in aligning the definition in state law with that in federal law.

The sponsor may wish to consider modifying HB 13’s language to align with the definition of “local tax revenues” in federal law.

Substantive Issues:

In 2006, the Legislature passed the *Regional Spaceport District Act* that required:

- each governmental unit to enact a municipal or county regional spaceport gross receipts tax prior to December 31, 2008;
- at least 75 percent of the tax revenue received by each governmental unit to be used for the financing, planning, designing, engineering, and construction of a regional spaceport; and
- not more than 25 percent of the tax revenues to be used by the governmental unit enacting the tax for spaceport-related projects as approved by resolution of the governmental unit.

Prior to the December 31, 2008 deadline, both Doña Ana and Sierra counties enacted county regional spaceport gross receipts taxes to take effect in January 2009. According to the Taxation and Revenue Department’s (TRD) table *Enactment Dates of Local Option Taxes*, municipal

regional spaceport gross receipts taxes have not been enacted, and the ones in Doña Ana and Sierra counties are the only two county regional spaceport gross receipts taxes.

The component of the tax that pertains to the SEG and funding of public education appears to lie within the “not more than 25 percent” for “spaceport-related projects as approved by resolution of the governmental unit.”

Resolution from Doña Ana County

The resolution passed by the County Commission in Doña Ana County on March 13, 2007 resolves the following:

- that the Doña Ana County Commission pledges to grant the 25% “spaceport-related” funding to the Hatch Valley Public Schools, the Gadsden Independent Schools, and the Las Cruces Public Schools for support and development of special programs that focus on math, science, and technology education.

Resolution from Sierra County

The resolution passed by the County Commission of Sierra County on February 7, 2008 specifies that:

- as the flow-through agency, Sierra County would disperse the 25% funding to the county’s one school district prorated on a per pupil 40th day enrollment count; and
- the local school district would ensure such funds would support expansion and improvement of existing science, engineering, technical, mathematics programs, and rigorous academic programs to support a strong, technically literate workforce.

New Mexico Finance Authority Oversight Committee

During the November 2013 interim committee meeting of the New Mexico Finance Authority Oversight Committee (NMFAOC), the committee discussed the provisions of this bill. According to minutes from that meeting, the primary concern appeared to be with regard to a local gross receipts tax for spaceport development distributed in part to spaceport region school districts for science, technology, engineering, and mathematics (STEM) education, without being considered in the SEG distribution calculation. The minutes state that committee members discussed the bill at that time and raised the following concerns:

- without this proposed law, school districts outside of the taxed area might sue the state to enforce the SEG;
- without this proposed law, other local governments could use portions of their gross receipts tax revenue for school operations, thereby diluting the SEG;
- the draft bill might not make explicit that any transfer to a school district would be factored into the SEG calculation, as opposed to a transfer made because the tax’s enabling legislation articulates the educational purpose of the revenue;
- the spaceport tax would not have won its narrow-margin voter approval without the widespread understanding that a portion of the tax’s revenues were to be dedicated to education in spaceport region school districts; and
- the recipient districts, which are poor, benefit greatly from the supplemental revenue generated by the spaceport tax.

The NMFAOC then endorsed the bill with two members in opposition.

Based on the discussion of this bill by the NMFAOC, it appears that the sponsor is seeking to ensure that local gross receipts tax revenues that are directed toward operational funding are incorporated into the equalized funding formula statewide. In particular, the conversation seemed to focus on the county regional spaceport gross receipts tax revenue. At the time of this bill analysis, it is unclear how many other, if any, local gross receipts tax revenues from across the state are directed toward funding operational. It is possible that other localities have something in place that could be impacted by this language. If that is the case, an unintended consequence of this might be the inclusion of additional local revenue into consideration of the SEG distribution.

Legislative Education Study Committee

In addition, during the December 2013 interim committee meeting of the Legislative Education Study Committee (LESC), the sponsors provided testimony about the version of this bill that was endorsed by the NMFAOC. In that presentation, the sponsor mentioned that this bill is intended to ensure the state is taking credit in the SEG for all local revenues in proportion to federal revenue, including taxes levied by municipalities and counties such as the spaceport gross receipts tax, whose proceeds are at least partially directed toward school operational funding.

Background:

Federal Requirements

According to 34 CFR 222.161-163, New Mexico is authorized to take credit for federal revenue while determining its final state SEG distribution to local districts because:

- 1) the SEG distribution is considered to be an equalized funding formula; and
- 2) the state only takes credit for federal revenues in proportion to the share that local tax revenues covered under a state equalization program are of total local tax revenues.

New Mexico's SEG distribution continues to be recognized as an equalized funding formula by meeting the requirements of a "disparity standard" each year and demonstrating that the state is taking credit for federal revenue in proportion to local revenue.

The definition of "local tax revenue" in federal regulation, however, differs from the way the state defines it in the *Public School Finance Act* (see "Fiscal Issues," above). According to 34 CFR 222.161, federal law defines "local tax revenues" as:

Local tax revenues means compulsory charges levied by an LEA [local education agency] or by an intermediate school district or other local governmental entity on behalf of an LEA for current expenditures for educational services.

Additionally, 34 CFR 222.169 specifies that:

Local revenues that can be excluded from the proportion computation are those received from local non-tax sources such as interest, bake sales, gifts, donations and in-kind contributions.

Based on these components of federal regulation, it is possible that federal regulations require the state to take credit for local option gross receipts taxes imposed by municipalities or counties on behalf of a school district if it is to continue taking credit for federal revenues.

New Mexico's State Equalization Guarantee

Enacted by the Legislature in 1974, the state equalization guarantee (SEG) distribution (also known as the public school funding formula) is based on a model developed by the National Education Finance Project in the late 1960s and early 1970s. The system supports the Legislature's policy that all students are entitled to an equal educational opportunity despite differences in local school district wealth. The formula is student driven and recognizes different costs for various educational programs.

Designed to distribute operational funds to school districts and state-chartered charter schools in a non-categorical manner, the SEG distribution provides for local school district and charter school autonomy. SEG distributions received by local school districts and state-chartered charter schools are not earmarked for specific programs and these entities may spend their distributions according to local priorities.

In making the SEG distribution, the funding formula is designed to ensure that overall operating revenue in school districts and state-chartered charter schools equals at least the program cost of the school district or state-chartered charter school, as determined by the funding formula. In order to accomplish this, the funding formula takes certain credits and deductions for other revenue sources of operational dollars as applicable to each school district and state-chartered charter school. These include 75 percent of:

- receipts from local 0.5-mill levy property taxes;
- receipts from the assessed value of products severed and sold in the school district under the *Oil and Gas Ad Valorem Production Tax Act*;
- receipts upon the assessed value of equipment in the school district as determined under the *Oil and Gas Production Equipment Ad Valorem Tax Act*;
- most federal impact aid funds; and
- federal forest reserve funds.

School districts and state-chartered charter schools retain 25 percent of these funds to use at their discretion for operational or other purposes.

Committee Referrals:

HEC/HTRC

Related Bills:

HB 19a *Update School Finance At-Risk Index*
HB 35 *Additional Funding Units for Some Schools*
HB 37 *Equalization Distribution to Certain Schools*
HB 122 *Licensed School Employee Program Units*
SB 54 *Public School Funding Adequacy*
SB 172 *Spaceport Gross Receipts Tax Uses*