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## FISCAL IMPACT REPORT

SPONSOR: Stewart DATE TYPED: 3/2/03 HB 917

SHORT TITLE: Local Operational School Levy Act SB \_\_\_\_\_

ANALYST: L. Baca

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	\$.01 See Narrative		Recurring	Local Operational School Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to: HB 166, Amend Property Tax Rates  
HB 283, Tax Administration Act Amendments

### SOURCES OF INFORMATION

Responses Received From  
State Department of Education (SDE)

### SUMMARY

#### Synopsis of Bill

House Bill 917 creates the Local Operational School Levy Act to allow school districts to request voter approval for a local property tax levy for school operational purposes. The request may be for up to 4 mills but no more than 2 mills at any one time and for a period not to exceed 10 years. The bill establishes a state guarantee and provides that those districts that impose the levy and generate funds below the state guarantee could receive funds to bring them up to the state guarantee. Districts that generate in excess of the state guarantee would remit a portion to the "Local Operational School Fund," a fund created by this bill. Money in this fund would be used to provide the state match required by the provisions of the bill. Any local levies authorized by this bill could not be imposed (certified) if the state would fail to qualify as an equalized state and lose its ability to take credit for eligible Impact Aid receipts.

Significant Issues

This bill addresses three major issues confronting the state's policymakers:

- retaining and improving the 25-year plus tradition of equalization, or equity, in distributing state support for public schools;
- finding additional resources to finance public schools; and
- maintaining the state's federal designation as an equalized state and thereby be allowed to continue to take credit for eligible Impact Aid (P.L. 874) funds, which in fiscal year 2003 totaled \$46.1 million.

HB 917 proposes a process for local school boards to request voter approval for a local property tax for the operation of a school district. It creates a mechanism designed to encourage voters to approve a levy and retain all or most of the revenue generated along with formulas allowing the distribution of "excess revenue" through the "Local Operational School Fund." This proposal seeks to maximize voter approval of levies for support of public schools, increase the revenue available to all school districts, and maintain New Mexico's federal designation as an equalized state.

To qualify as an equalized state, New Mexico must meet federal requirements or lose the ability to legally take credit for a percent of Impact Aid receipts. New Mexico statutes require that the state take credit for 75% of the local .5 mill levy, forest reserve and eligible Impact Aid funds. To qualify as an equalized state, the state must maintain a disparity as calculated using a federal formula. First, according to SDE, allowing districts to impose local option tax for operational purposes could cause a disparity greater than that allowed by federal law. Second, imposition of the local levy would necessitate that calculations be made on a by-district basis, and the amount of credits could be reduced. As prescribed by federal law, the disparity factor is calculated on the second preceding year fiscal expenditures.

Using calculations based on 2002-2003 40-day district program cost calculated pursuant to the provisions of 22-8-25 (D), the SDE states in its analysis:

"Using 2002-2003 as a point of reference, the bill would result in a state guarantee of \$85.7 million and would generate local tax revenue of \$63.5 million. Under this scenario, \$3.5 million returned to the "local Operation School fund" would be available for redistribution to districts that generate less than the guarantee. To move school districts that generate less than the guarantee to the guarantee level would require \$30.7 million. To fully fund the guarantee under this assumption an additional appropriation of \$27.2 million would be required from the legislature. (See SDE tables attached.)

**FISCAL IMPLICATIONS**

From its review of computer simulations using the provisions of the bill, the SDE concludes that:

- The bill may not allow the state to continue to qualify as an equalized state if the 2 mill and 4 mill levies are applied equally throughout the state.

- It is more likely the state can continue as an “equalized state” using the random imposition of local operational levy, although it appears the total credits may be reduced
- It is not possible to determine the proportionate rate and resulting impact to the state because it is not possible to predict how and which school districts would impose the tax.

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

## **TECHNICAL ISSUES**

In its analysis, the SDE raises several technical issues, which are quoted below:

- (a) Section 5(C) of the bill provides that the Department of Finance and Administration shall not certify the tax rates for any year in which the Superintendent certifies that money in the local operational school fund for the next school year is not sufficient. The bill should address whether this provision presumes that the balances in the state support reserve fund are taken into consideration in reaching this determination. In addition, this provision should be reconciled with the proportionate reduction set forth in Section 7(D). Section 5(C) should also state that the certification of the rate for any succeeding year is subject to Paragraph 5(D) of the bill.
- (b) Section 5 (D) provides that the Department of Finance and Administration shall not certify the tax rate under certain circumstances. It is unclear, however, whether the phrase “any school district in the state” refers to a statewide restriction on imposition of the tax or whether the restriction will apply only to selected districts.
- (c) Section 2 (B) states that “‘forty-day program costs’ means program costs, as defined in the Public School Finance Act, for any school district as calculated using membership, as defined in the Public School Finance Act, on the fortieth day of the applicable school year in that school district.” In 22-8-25 (D) of the Public School Finance Act as delineated in HB 917, program cost is calculated on the basis of the “average of the membership on the fortieth, eightieth and one hundred twentieth days of the prior year.” This seeming conflict could cause difficulties in implementing the provisions of the bill.
- (d) Section 5(C) of the bill provides that the Department of Finance and Administration shall not certify the tax rates for any year in which the Superintendent certifies that money in the local operational school fund for the next school year is not sufficient. The bill should address whether this provision presumes that the balances in the state support reserve fund are taken into consideration in reaching this determination. In addition, this provision should be reconciled with the proportionate reduction set forth in Section 7(D). Section 5(C) should also state that the certification of the rate for any succeeding year is subject to Paragraph 5(D) of the bill.
- (e) Section 5 (D) provides that the Department of Finance and Administration shall not certify the tax rate under certain circumstances. It is unclear, however, whether the phrase

“any school district in the state” refers to a statewide restriction on imposition of the tax or whether the restriction will apply only to selected districts.

- (f) Section 2 (B) states that “‘forty-day program costs’ means program costs, as defined in the Public School Finance Act, for any school district as calculated using membership, as defined in the Public School Finance Act, on the fortieth day of the applicable school year in that school district.” In 22-8-25 (D) of the Public School Finance Act as delineated in HB 917, program cost is calculated on the basis of the “average of the membership on the fortieth, eightieth and one hundred twentieth days of the prior year.” This seeming conflict could cause difficulties in implementing the provisions of the bill.
- (g) Federal Law, 20 USC 7709 (b)(2) provides that disparity is computed based on second preceding fiscal year expenditures. The tax year and the federal law on disparity certification don’t coincide.

## **OTHER SUBSTANTIVE ISSUES**

The Local Operational School Levy Act adds three major sections to the Public School Finance Act: a process by which a local board may request voter approval of a local levy, relation to Impact Aid funds, and requirements for the distribution and remittance of local operational levies.

## **PROCESS**

To submit a local operational levy to the voters, the local board must:

- adopt a resolution to place the issue before the school districts voters;
- stipulate the rate and period for which imposition of the levy is requested;
- present the question to the voters at a regularly scheduled school election, unless the board determines there is need for a special election the first time the question is put to the voters for their consideration;
- present any future local levy request to the voters only during regular school elections,
- propose a levy of up to 4 mills but not to exceed 2 mills at any one time; and
- conduct the elections pursuant to the School Election Law.

The bill stipulates that the levy may not be imposed for a period to exceed 10 years, and any levy imposed prior to the 2005 regular school election prior to 2005 shall be for a period ending no later than December 31, 2013. However, the local board may by resolution discontinue the levy during the authorized period if such action is deemed necessary.

During the three years prior to the expiration of any period for which the tax was imposed, the local board may by resolution ask voters to reauthorize\extend the local operational levy for a period not to exceed 10 years.

## **RELATION TO IMPACT AID**

HB 863 requires that local operational levies assessed be discontinued if at any time continuance of the levies would make the state ineligible to take credit for 75% of the eligible Impact Aid receipts.

**DISTRIBUTION AND REMITTANCE**

To implement its provisions, the bill sets forth graduated equalization provisions that require that a local school board shall remit to the “Local Operation School fund” by June 30 of the school year an amount equal to the sum of the amounts derived from the following calculations:

- $\frac{1}{4}$ th of the amount of revenue that exceeds 125% of the state guarantee but less than 150% of the state guarantee;
- $\frac{1}{2}$  of the amount of revenue that exceeds 150% of the state guarantee but less than 175% of the state guarantee; and
- $\frac{3}{4}$ <sup>th</sup> of the amount of revenue that exceeds 175% of the state guarantee.

The bill further provides that the State Support Reserve Fund will be used in any fiscal year in which the “Local Operational School Fund” balances are insufficient to pay the sum of the distribution amounts due to all school districts.

**LRB/yr**