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FISCAL IMPACT REPORT

ORIGINAL DATE 2/23/09
 LAST UPDATED 2/28/09 HB _____

SPONSOR Campos

SHORT TITLE Lease Purchase of Alternative Fuel Vehicles SB 580

ANALYST Archuleta

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$0.01	\$0.01	Recurring	Public School Utility Conservation Fund

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.01	\$0.01	\$0.02	Recurring	

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

General Services Department (GSD)
 Public Education Department (PED)
 Energy Minerals and Natural Resources Department (EMNRD)
 Higher Education Department (HED)
 Environment Department (NMED)

SUMMARY

Synopsis of Bill

Senate Bill 580 amends the Energy Efficiency and Water Conservation Act to replace the term public facility with governmental and incorporates measures that are designed to reduce the adverse effect of carbon footprints of buildings, equipment and vehicles on the environment. The bill would allow for the purchase or lease/purchase of alternative fuel option fleet service vehicles to include school buses. The bill establishes the terms for lease purchases to work based on the total payments made minus any lease principal and interest components figured into the purchase price.

FISCAL IMPLICATIONS

The fiscal implication of this bill is indeterminate at this time.

According to PED, the bill pays for itself by funding the Public School Utility Conservation Fund by imposing a distribution of $\frac{1}{4}$ of 1% to the fund from the Oil and Gas Emergency School Tax Act. PED assumes this funding is to be used as an incentive to enter into lease purchase energy conservation contracts; it also assumes that the money in this fund is not intended to preempt current school bus transportation funding implied by Articles 16 and 17 of the Public School Code.

According to HED, the bill does not contain a quantifiable appropriation. It stipulates distribution of funds to the Public School Utility Conservation Fund from the Oil and Gas Emergency School Tax Act.

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

SIGNIFICANT ISSUES

Senate Bill 580 allows all governmental entities to either lease or lease purchase alternatively fuel powered vehicles to include school buses. It also established a separate fund for schools along with a distribution to this fund.

The Transportation Services Division (TSD) of the General Services Department currently controls approximately 2,400 vehicles. These vehicles are acquired via state-wide price agreements. The ability to lease purchase vehicles has not been utilized by the division simply because it is not legal to do so. However, TSD does enter into third party commercial leases with major vehicle providers in order to meet customer demands. Currently TSD has over 800 alternatively fuel powered sedans in the TSD controlled fleet that are acquired for 36 months or 60,000 miles.

SB580 would allow state agencies to enter into a vehicle lease purchase energy conservation contract for the purposes of acquiring vehicles. SB580 will still require that vehicles under TSD control acquire the approval from the Secretary of the General Services Department prior to entering into these agreements. State agencies whose vehicles are outside of TSD control will be allowed to acquire (lease-purchase) vehicles with the agency heads signature

PED indicates that while the concept of “carbon footprint” is a relatively new concept and is defined on Page 2 of the bill, the bill is short on details on how it is measured and raises the question of whether the PED has sufficient environmental engineering expertise to determine energy conservation in reviewing and approving contracts under the Act.

The provisions on Page 7, Lines 20 – 25 that describe the PED’s role in reviewing lease purchase energy conservation contracts may give rise to criticism that such contracts are illusory since essentially the provisions seem to require the creation of no legal obligation

for a school district to continue. Presumably, the provision relates to the loss or absence of energy conservation, although that is not stated.

The Environment Department notes the following: alternative fuel vehicles contribute fewer emissions and have greater fuel economy than traditionally fueled vehicles. The fuel economy of alternative fuel vehicles means that less air pollution is emitted from the vehicle per mile traveled, resulting in better air quality statewide. Additionally, improved fuel economy reduces greenhouse gas emissions, which would help to lessen the severity of climate change. Emissions from transportation sources account for approximately 29 percent of the total U.S. greenhouse gas emissions. Transportation is the largest end-use source of carbon dioxide or CO₂, which is the most prevalent greenhouse gas. The amendment would increase the state's regional and national progress toward combating greenhouse gas emissions, which significantly contribute to climate change.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

GSD notes that Senate Bill 450 proposes the acquisition of more fuel efficient vehicles that meet or exceed corporate average fuel economy standards, as issued by the National Highway Transportation Safety Administration of the United States Department of Transportation. SB450 does not completely do away with the acquisition of eco friendly vehicles it merely seeks to assure that taxpayer dollars are spent on units that are more fuel efficient and leave a smaller carbon footprint.

HB 89 provides a hybrid vehicle excise tax exemption for a vehicle with a certificate of title owned by the State of New Mexico or any political subdivision.

TECHNICAL ISSUES

EMNRD identified the following technical issues: Page 1, Line 15, delete “from the extraction taxes suspense fund” and insert after the word “distribution”, the following: “OF A PORTION OF THE RECEIPTS ATTRIBUTABLE TO THE OIL AND GAS EMERGENCY SCHOOL TAX ACT.” Also, on Page 2, Line 10 between the words “of” and “buildings,” add the word “government”. This accurately characterizes the type of property that is subject to the statute.

OTHER SUBSTANTIVE ISSUES

GSD is concerned with the lease-purchase route at acquiring vehicles. Would the state procurement code need to be amended to allow for this transaction to occur? For a lease-purchase with general funds any lease must contain a non-appropriations clause, a clause permitting cancellation at the end of any fiscal year or at will, and the purchase price must be for fair market value at the time of the purchase or the transactions could be challenged as violating the state constitutional limits on the incurrence of debt. See *Montano v. Gabaldon, 108 NM 94 (1989)*

The Public Facility Energy Efficiency and Water Conservation Act are based upon the savings from reduced operating expenses being used as a funding mechanism to support capital investments. The lease purchase of alternative fueled vehicles may or may not result in operating cost savings.

HED notes that the bill covers all governmental units including two and four-year institutions of higher education. It will enable the lease/purchase of alternative fuel vehicles including school buses provided a pre-approved contract with certain termination clauses is included. Lease/purchase options for vehicles are not currently allowed and purchases do not require pre- approval by another authority.

ALTERNATIVES

GSD suggests that schools and institutions of higher learning may want to explore the options of leasing vehicles which are alternatively fuel powered minimizing the need for large capital outlay expenditures.

DA/mc