

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 328

51st Legislature, 1st Session, 2013

Tracking Number: .191426.3

Short Title: School Bus Fuel Gross Receipts

Sponsor(s): Representative Roberto “Bobby” J. Gonzales and Others

Analyst: Ian Kleats

Date: February 21, 2013

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

Bill Summary:

Effective July 1, 2013, HB 328 would enact a new section of the *Gross Receipts and Compensating Tax Act* to exempt receipts from the sale of fuel used in the to-and-from transportation of students from the gross receipts and compensating taxes.

Fiscal Impact:

HB 328 does not contain an appropriation.

Fiscal Issues:

The LESC staff estimated revenue impact, as illustrated in the table below, considers the amount of special fuel excise tax paid on the number of gallons of fuel purchased by school bus contractors. According to the Taxation and Revenue Department (TRD) bill analysis, the Public Education Department (PED) estimates that school bus operators contracted with the PED purchased about 1.5 million gallons of diesel fuel in FY 12. At \$.21 per gallon, the amount of tax currently collected from those purchases would total about \$315,000. The estimate assumes gallons-used will remain constant between fiscal years.

Estimated Revenue Impact*				R or NR**	Fund(s) Affected
FY 13	FY 14	FY 15	FY 16		
0	(315.0)	(315.0)	(315.0)	R	State Road Fund

* In thousands of dollars. Parentheses () indicate a revenue loss.

** Recurring (R) or Nonrecurring (NR).

It appears that TRD, PED, and the Department of Finance and Administration (DFA) may have incorrectly scored the revenue impact in their agency bill analyses. As explained more fully under **Substantive Issues** below, school bus contractors currently choose to pay special fuel excise tax. The provisions of HB 328, although relating to gross receipts and compensating tax, would actually allow those contractors to benefit from certain special fuel excise tax provisions. As such, HB 328 should be correctly scored against the State Road Fund, the beneficiary of special fuel excise tax revenue, not the General Fund.

The provisions of HB 328 could result in net cost savings to the General Fund of over \$300,000 either by reducing the appropriation needed for school transportation fuel costs or by mitigating the need for emergency supplemental fuel distributions.

In FY 12 and FY 13, the Legislature appropriated \$1.2 million and \$1.5 million respectively as emergency supplemental distributions to accommodate fuel price increases. The bill's provisions could stretch General Fund dollars appropriated for school transportation further and minimize any future emergency supplemental distributions.

Substantive Issues:

Provisions in the *Special Fuels Supplier Tax Act* allow school bus contractors to benefit from:

- a deduction of gallons of special fuel sold when calculating special fuel excise tax due, which would most commonly occur for contractors buying diesel fuel wholesale; or
- a refund of special fuel excise tax paid, which would most commonly occur when fuel is purchased at retail.

The exemption for fuel from the gross receipts and compensating taxes includes the clause, “on which the tax imposed by Section 7-13-3, 7-16-3 or 7-16A-3 NMSA 1978 or the *Alternative Fuel Tax Act* has been paid and not refunded.” This clause means that, if a school bus contractor uses the special fuel excise tax deduction or refund, the transaction would generate gross receipts or compensating tax liability. In essence, the contractor must choose between paying the lesser of gross receipts and compensating taxes or the special fuel excise tax.

At current and projected diesel price levels, gross receipts tax, with a statewide average rate of 6.8 percent, and compensating tax, with a statutory rate of 5.125 percent, exceed the flat \$.21 per gallon special fuel excise tax. This is one reason why TRD must rely on PED reporting of diesel gallons purchased by school bus contractors; although TRD tracks the use of the current deduction and refund, no school bus contractors take advantage of those provisions because they would cost the contractors more than just paying special fuel excise tax in the first place.

Additionally, the special fuel excise tax deduction and tax refund are structured in a way that could be considered “upside down.” Because a taxpayer using those two tax expenditures must pay gross receipts tax or compensating tax instead, the price relief provided by the deduction or refund is greatest when fuel prices are low; conversely, the price relief afforded is at its least or even nonexistent when the price of fuel is high. The provisions of HB 328 would allow for the level of fuel price relief to remain constant for all price levels.

Tax Deductions vs. Tax Exemptions

The distinction between tax deductions and exemptions bears mention. Under most instances, a gross receipts tax deduction could be considered preferable to a gross receipts tax exemption from a tax policy perspective because the use of deductions can be tracked to a greater degree than exemptions. However, in the case of HB 328, this is not the case. The special fuel excise tax deduction and refund provide parallel reporting mechanisms through which the use of the gross receipts tax exemption can be tracked. In fact, if HB 328 were structured as a deduction instead, the TRD would be required to maintain a redundant tracking mechanism at a nontrivial administrative cost.

Finally, public school districts and state-chartered charter schools currently pay neither special fuel excise tax nor gross receipts tax on diesel fuel purchases. That private school bus contractors do could be viewed as a competitive disadvantage placed on the provision of school transportation services. HB 328 would provide the same tax treatment to private enterprise as public schools.

Background:

During the 2012 interim, the Legislative Education Study Committee (LESC) convened a school transportation subcommittee, which included members of the Legislature and other interested parties, such as school administrators and private school bus contractors. The subcommittee met several times during the interim to discuss issues related to school transportation including:

- school bus replacement schedules;
- allocations through the school transportation funding formula; and
- options to deal with high fuel costs, which included alternative funding mechanisms, fuel price forecasting methods, and cost-saving measures.

The provisions of HB 328 were the result of the subcommittee's deliberations, and the bill was unanimously endorsed by the LESC on January 14, 2013.

Committee Referrals:

HTPWC/HTRC

Related Bills:

None as of February 18, 2013.