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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/26/15  
**LAST UPDATED** 3/16/15     **HB** \_\_\_\_\_

**SPONSOR** Stewart

**SHORT TITLE** Local Gov't IRB Notices & Impacts     **SB** 131

**ANALYST** Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
	*	*	*	*	Recurring	Local Governments
	>0	>0	>0	>0	Recurring	School Districts

(Parenthesis ( ) indicate revenue decreases

[\*] Note: see Fiscal Impact discussion below. Impacts on School Districts may be positive, because of the negotiated PILOTs. However, the requirements to qualify for a PILOT mean that very few PILOTs will occur. Local governments revenues could either increase or decrease depending on the influence of this new provision on closing projects that contribute to economic development.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 Economic Development Department (EDD)  
 Department of Finance and Administration (DFA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 131 requires municipalities and counties contemplating issuing industrial revenue bonds (IRB) to notify other local property tax levying entities of the possibility. SB 131 also creates a mechanism by which school districts that would experience a significant impact (defined in the bill) attributable to an IRB project, could negotiate and receive a payment in lieu of taxes (PILOT) aimed at assisting the school district accommodate increased school district membership and capital costs associated with growth generated by the bond issuance.

SB131 would require municipalities to provide 30 days advance notice of any meeting at which final action on the bond ordinance is to be taken to all local public bodies with property taxing authority that would be affected by the issuance of the bonds and to allow those bodies, upon request, an opportunity to comment on the impact of the proposed bond issuance. Currently, municipalities need only provide such notice and opportunity to provide comment to the board of county commissioners and the county assessor. If enacted, SB131 would maintain a county's

similar reporting requirements to the county assessor and to all entities located within the county possessing authority to levy taxes on property.

The bill does not contain an effective date: assume June 19, 2015, with applicability for any IRBs implemented after that date.

### **FISCAL IMPLICATIONS**

This bill may create positive revenue for school districts in areas where IRBs are issued because of the potential for PILOTs. However, this may be relatively rare. Public school districts are allowed to impose up to .5 mill (\$.50 per \$1,000 of taxable value) for operating purposes. They are also allowed to impose a debt levy for School District Educational Technology and up to the constitutional bonding capacity of 6 percent of cumulative assessed valuation for capital outlay. The operating rate is subject to yield control and the debt levies adjust to changes in the tax base to cover the required debt service. In a large city or county, the requirement for a 15 percent increase in membership over a three-year period is quite stringent. This threshold could be reached in a smaller community, however. The school operating impact is self-adjusting. If membership increases by 15 percent, then the school funding formula revenues would also increase by 15 percent. The problem comes in case the impacted district must build new school buildings to house the increased membership. The minimum requirement for negotiating a PILOT is that the size of the bond required to build the buildings to house the increased membership is that the bond would exceed 75 percent of the district's bonding capacity. 75 percent of 6 percent is 4.5 percent of assessed value. For larger districts, this is a difficult threshold. For small districts with large impact, the threshold would occur and the PILOT would be used for initial operating costs (before the funding formula revenues started to flow), but primarily to assist in building new schools.

If the PILOT is substantial relative to the tax savings from the IRB, the company proposing the IRB project may decide they can get a better deal in another community, where the distortion is less than the 15 percent/75 percent thresholds. In that community, the company would not be required to negotiate or pay a PILOT.

DFA notes:

“There is a fiscal impact on local governments whenever an IRB is issued. This legislation would permit each taxing authority the opportunity to comment on a municipality's or county's proposed IRB issuance and the associated fiscal impact. Each issuance is different and will produce a different fiscal impact. There might be an impact to the Public Education Department (PED) if companies benefitting from IRBs do not pay property taxes for up to 30 years and the local school district cannot negotiate a PILOT. In this situation the local school district may have to ask the PED for funds to compensate for the lost property tax revenue.”

### **SIGNIFICANT ISSUES**

Pursuant to the provisions of this bill, both the Industrial Revenue Bond Act and the County Industrial Revenue Bond Act allow a school district that may experience a significant increase in membership or capital needs to request of the sponsoring city or county that a study of such increases be conducted by the company and the sponsoring government. If the study reveals a 15 percent increase in membership or an increase in capital costs exceeding 75 percent of the school

district's general obligation bonding capacity, the school board is entitled ("shall negotiate" in the bill) to negotiate a PILOT to cover a portion of these increased costs not adequately reimbursed through the state funding formula. This is primarily to provide funds to build new schools to accommodate the increased demands. The school board may vote to waive the PILOT.

Unfortunately, if the effect of a negotiated PILOT is to cause the project not to occur, or to move to a nearby larger jurisdiction, the local school board may choose that they would rather have the project, with its jobs and economic activity, than to have the PILOT. Because the funding formula provides revenues in proportion to the increase in membership, the costs of teachers will be met.

Per the Attorney General's Office, "this bill appears to eliminate the requirement that municipalities provide notice to the county assessor prior to taking final action on an ordinance authorizing the issuance of municipal revenue bonds, but maintains that requirement for counties desiring to issue county revenue bonds. This may be an unintended consequence. Further, SB131, if enacted, would require counties to provide advance notice to the county assessor and local property tax levying entities via certified mail, return receipt requested, but is silent as to the method of delivery for municipalities. In addition, SB131 deletes existing provisions clarifying that: (1) the county assessor and other entities authorized to levy property taxes do not possess veto authority over a municipality or county; (2) that municipalities and counties must jointly develop criteria for issuance of industrial revenue bonds by either government, and; (3) that industrial revenue bonds may be authorized and issued before development of the criteria is developed."

Also per the AGO, "with regard to the new mechanism for school districts to request a determination of the impact that issuance of revenue bonds would have on the school district, it appears that such a mechanism may have the effect of making revenue bonds a less attractive option to private entities, since the company requesting bonds would be burdened with the cost of conducting the study to determine the impact. Along those lines, where such impact is significant (an increase of more than 15 percent in the school district's membership over a 3 year period or an increase in the capital costs of meeting the projected growth payable from general obligation bonds that would result in the school district exceeding 75 percent of its general obligation bonding capacity), the school district would be entitled to a payment in lieu of taxes it deems acceptable, but it is unclear whether such payment is to be made by the municipality/county or the company requesting the bonds. Although it is strongly implied, SB131 does not explicitly state that the payment in lieu of taxes is payable to the school district. In addition, SB131 does not define what a "school district's membership" consists of."

This bill appears to conform to the LFC tax policy principles of adequacy, efficiency, accountability and equity. This allows a school district unduly affected by an economic development tax expenditure to recoup some of the losses with a negotiated PILOT.

If a negotiated PILOT is used for capital outlay, then the local government tax effort offset in the funding formula would not apply. However, if the funds were used for operating, then the funding formula might take credit for 75 percent of such funds. Advice from PED or LESC should be sought on this point. A plain reading of 22-8-25 NMSA 1978 clearly excludes non-property tax funds as "local revenue."

B. "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 ...“

## **PERFORMANCE IMPLICATIONS**

This bill aids local school districts in the case where a large economic development project, funded with an IRB, cause the district’s capital needs – i.e., new school buildings – a source of funding for this created need.

## **TECHNICAL ISSUES**

Per the AGO, “it may be helpful to expressly state that the payment in lieu of taxes is payable to the school district and specify whether the municipality/county or company requesting bonds is responsible for making the payment at Section 2(B) and Section 4(B). It may also be helpful to define what is meant by “school district’s membership” at Section 2(C)(1) and Section 4(C)(1).”

## **OTHER SUBSTANTIVE ISSUES**

DFA notes the following issues:

“The new sections 2 and 4 indicate that school districts may request that the county or municipality and the company perform a study to determine if the IRB impact is significant and to what extent. The bill further states that the company involved pay for this study. This may lead to a conflict of interest as the company paying for the study may then have to negotiate the PILT with the public school district. There may be pressure on those performing the study to cause the results to lessen the impact so that it is not significant, or less significant. Local school districts, however, may have an interest in making every IRB impact “significant” so that a PILT can be negotiated. If the school district insists on a high dollar amount for the PILT this could create a disincentive for a new business and make the locality economically unattractive.”

“Another issue that is not addressed is the situation when a company is not successful. In the situation where a company downsizes the state assessed property tax rate for all other property, taxes in the affected county may increase. What happens when a school district’s membership increases and the company involved cannot make the PILT?”

“A third issue that is not addressed is the duration of the PILT and the ability of the parties to re-negotiate the terms. If the initial impact study is too conservative, the local school district could be adversely impacted. On the other hand, if the initial impact study is excessive, the affected business could be adversely impacted.”

“Language could be added to the bill indicating that a neutral third party monitor/direct any requested study on school district membership impact, even though the company is paying for the study. Another possible option is to allow a school district impose a fee to the affected company not to exceed its actual cost of completing the membership impact study.”