F I S C A L   I M P A C T   R E P O R T

SPONSOR Sapien **ORIGINAL DATE** 02/08/10 **LAST UPDATED** ______ **HB** ______

SHORT TITLE Local School District Gross Receipts Tax Act **SB** 153

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	See narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	No estimate available		Recurring	

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Department of Finance and Administration (DFA)
Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 153 would enact the Local School District Gross Receipts Tax Act which gives local school boards authority to impose by resolution a “local school district gross receipts tax” for operational purposes of the school district. The tax may be imposed in one or more increments of one-eighth of one percent, not to exceed a rate of one-half percent of the gross receipts of persons engaging in business in the school district. The tax would be imposed for a period not to exceed three years from the effective date of the resolution imposing the tax.

The Taxation and Revenue Department shall collect the local school district gross receipts tax in the same manner and at the same time it collects the state gross receipts tax and shall transfer to each local school board for which it is collecting a tax the amount of tax collected for that local school board, less an administrative fee not to exceed 3% and less disbursements for tax credits, refunds and payment of interest applicable to the tax. The bill also amends Tax Administration Act to apply to the administration and enforcement of the new tax.

The bill would become effective on July 1, 2010.

FISCAL IMPLICATIONS

There are no revenue estimates available at this time on the amount of revenue that might be raised in subsequent years if this bill is passed.

The TRD states that if any school boards impose the tax an administrative fee "not to exceed 3%" will be retained by the department and transferred to the General Fund.

The TRD would transfer the net amounts (see TECHNICAL ISSUES) to the school districts that had imposed the tax. It is not clear if these amounts would affect the transfers made to the school districts as appropriated by the legislature and budgeted by the PED.

SIGNIFICANT ISSUES

The LFC believes that if passed, this bill would destroy the current structure of public school support statewide and defeat the purpose of the State Equalization Guarantee (SEG) by realizing the potentially large differences in school district funding that the SEG is designed to prevent. This concern is also expressed below by the PED, and could have the unintended consequence of increasing the total cost of public education in New Mexico by as much as $48 million according to the PED. School districts in larger cities and municipalities could generate significant revenues, while those in smaller districts would have very limited opportunities to do the same.

New Mexico's municipalities and counties are authorized to impose over 4 percent of local option gross receipts taxes (that figure excludes several additional local option taxes that have been authorized for selected local governments). Due to increasing imposition of local option taxes, the statewide gross receipts tax rate is increasing steadily. On average, a local option gross receipts tax of about 2.07 percent was imposed by local governments statewide in FY09. Combined with the state gross receipts tax of 5 percent, the statewide tax rate was therefore 7.07 percent.

The DFA explains the impact as follows.

There is substantial risk that this local option school district GRT would be considered "local revenue" for the purpose of the SEG credit. Once the school districts understand that ¾ of the proceeds of the local school district GRT could simply, in effect, be transferred to all other school districts in proportion to the amount of each districts SEG, it is unlikely that this tax would be adopted by any district. In effect, the tax proceeds would be "taxed" by the state at a marginal rate of 75% of the proceeds.

The TRD observes that local option gross receipts tax (grt) rates have risen significantly in recent years. For example, between FY04 and FY09 the average local option rate within municipalities increased from 1.13% to 2.07%. The rate in several municipalities now exceeds 3.3%, and rates could rise to nearly 5% under current law. Combined with the State rate of 5%, total grt rates imposed in municipalities now average over 7%, are over 8.3% in several municipalities, and could rise to nearly 10%. Before enacting additional gross receipts taxes, local governments should carefully weigh the costs and benefits. For example, there are inherent economic inefficiencies in the grt, in particular the "pyramiding" of tax on sales between businesses. These losses in economic efficiency mean that the cost of the tax to the economy exceeds the amount of tax revenue collected, and the excess cost rises rapidly as tax rates are increased. Careful consideration should therefore be given to any proposed increases in authorized local option rates to ensure that the benefit to be derived from the tax outweighs the cost of its enactment.

The PED states the following concerns.

- It is unknown at this time how the local school district gross receipts tax (LSDGRT) could potentially affect each school district.
- Currently, the reduction to the state equalization guarantee (SEG) appropriation is being offset by the American Recovery and Reinvestment Act (ARRA) appropriation. It is unknown if any future ARRA appropriations will be awarded.
- Under the current public school funding formula, the state takes 75% credit for impact aid basic payments to help meet program cost. If passed, Senate Bill 153 could negatively impact the state's ability to take credit for impact aid basic payment receipts.
- New Mexico is one of three states that qualify as an equalized state under federal law.
- In order for the state to take credit for impact aid basic payment receipts, the state needs to meet the criteria established by the United States Department of Education (USDOE) for the disparity test. This bill has the potential for a negative impact on the state's ability to meet the criteria established by the federal government for the disparity test.
- Similar to the disparity test, in order for the state to take credit for impact aid basic receipts, the state needs to meet the criteria established by the USDOE for the proportionality test. The bill could also have a negative impact on the state meeting the criteria for the proportionality test as established by the federal government.
- In addition to meeting the disparity and proportionality tests, the state would have to take credit for the net receipts a district would receive from the LSDGRT in a manner similar to the operational half mill levy.
- Currently, the state takes credit for approximately $48,000.0 in impact aid basic payment receipts. If the state failed to meet the disparity and proportionality tests, and failed to take 75% credit for the LSBGRT, the SEG appropriation would have to be augmented by $48,000.0 in additional General Fund revenue to offset the decrease in the credit amount in order to maintain the unit value.

ADMINISTRATIVE IMPLICATIONS

According to the TRD, this bill would have a moderate impact on the department.

TECHNICAL ISSUES

The TRD notes that Section 8 of the bill provides that the department will transfer to the school district each month the amount of the tax collected, less the administrative costs and "less any disbursements for tax credits, refunds and the payment of interest applicable to the tax." Section 12 requires the department to transfer to the local school district an amount "equal to the net receipts attributable" to the tax, less the administrative fee. Net receipts is defined in 7-1-3J as "the total amount of money paid by taxpayers to the department in a month pursuant to a tax or tax act less any refunds disbursed in that month with respect to that tax or tax act." It is not clear that these two provisions are consistent.

OTHER SUBSTANTIVE ISSUES

The bill would significantly increase the difficulty taxpayers would have in determining the correct location code and tax rate for reporting the gross receipts tax. There are currently 89 school districts statewide and many cross boundaries of existing gross receipts tax districts (cities, counties, TIDDs, water and sanitation districts, etc.). Therefore, the bill could increase the number of location codes for gross receipts tax purposes by well over 100.

CH/svb