LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: **HB 388** **50th Legislature, 1st Session, 2011**

Tracking Number: **.184801.1**

Short Title: **College Textbook Purchase Gross Receipts**

Sponsor(s): **Representative Joni Marie Gutierrez**

Analyst: **Ally Hudson** **Date:** **February 24, 2011**

Bill Summary:

HB 388 amends the *Gross Receipts and Compensating Tax Act* to provide for a deduction, rather than an exemption, from gross receipts for all textbooks sold to students enrolled at New Mexico public postsecondary educational institutions.

The bill contains an effective date of July 1, 2011.

Fiscal Impact:

HB 388 does not contain an appropriation.

Fiscal Issues:

The Taxation and Revenue Department (TRD) analysis of HB 388 cites data from the US Department of Education's National Center for Education Statistics indicating that:

- there are slightly more than 140,000 students enrolled in undergraduate, graduate, or professional programs in New Mexico;
- the national average annual per student spending on books and supplies is $1,137;
- this estimate assumes that one-third of this spending will become deductible under HB 388; and
- an average tax rate of 7.2 percent is used.

Additionally, the TRD analysis includes a table illustrating a potential reduction to the General Fund in the amount of approximately $18.0 million.

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2011	**FY2012**	**FY2013**	**FY2014**	**FY2015**		
0	(1,920)	(1,990)	(2,070)	(2,150)	R	Local Governments
0	(2,260)	(2,350)	(2,450)	(2,550)	R	General Fund
0	(4,180)	(4,340)	(4,520)	(4,700)	R	**Total = (17,740)**

* in thousands of dollars.
Parentheses ( ) indicate a revenue loss.
** Recurring (R) or Non-Recurring (NR).

According to the Legislative Finance Committee (LFC) Fiscal Impact Report (FIR):

- except for public school districts and hospitals, a governmental gross receipts tax of 5.0 percent is imposed on the receipts of New Mexico state and local governments on the sale of tangible personal property from facilities open to the general public; and
- for governmental gross receipts purposes, a “facility open to the general public” does not include point-of-sale purchases for textbooks and course materials required for students who display a valid student identification card.

According to an analysis by Central New Mexico Community College (CNM):

- sales of textbooks and other materials from an on-campus bookstore are already exempt from gross receipts taxes, but there are other bookstores operating within the CNM taxing district that sell textbooks that are not exempt from gross receipts taxes under current law; and
- the exemption of gross receipts taxes at off-campus bookstores could make those businesses more competitive, potentially reducing revenues to public postsecondary institutions.

An analysis by the Public Education Department (PED) indicates:

- school districts, charter schools, state supported schools, and Bureau of Indian Education high schools currently purchase textbooks for students participating in the Dual Credit Program;
- PED reimburses these entities for the purchase of textbooks and course supplies; and
- because purchases from these entities and PED are tax-exempt, they are not affected by the changes outlined in HB 388.

Substantive Issues:

The TRD analysis explains that “the downside [of HB 388] is that the proposed tax expenditure goes against the tax policy goals of simplicity, efficiency and equity.” Moreover, the analysis states:

- it will be difficult for TRD to audit the expanded deduction because the current exemption for a few dozen businesses will be expanded to thousands of businesses;
- campus bookstores currently qualifying for the exemption are often closed to the general public and have a knowledge of the materials required for postsecondary coursework;
- expanding a deduction to all businesses will be problematic because it is unlikely that all businesses selling goods for postsecondary coursework will have the knowledge to determine if the materials are required or not; and
- thousands of businesses will need to upgrade their point of sale cash register systems to tax certain individuals but not others.

According to the LFC FIR:

- the gross receipts tax rate varies throughout the state from 5.125 percent to 8.6875 percent depending on the location of the business;
- the tax rate varies because it combines rates imposed by the state, counties, and if applicable, municipalities where the businesses are located; and

- the business pays the total gross receipts tax to the state, which then distributes the counties' and municipalities' portions to them.

The CNM analysis indicates that "students would benefit from both the exemption of gross receipts taxes at off-campus bookstores and from the increase in competition in general." On a similar point, the FIR indicates that HB 388:

- could level the playing field for local textbook retailers competing for sales with online vendors that, depending upon their physical presence in New Mexico, may or may not charge gross receipts tax; and
- would result in the lost of state tax revenues, while students may only save an average of about $50 per year on their college textbooks expenses.

Technical Issues:

According to the TRD analysis, the deduction proposed in HB 388 offers an advantage to a particular type of business, and as a result, meets the definition of an *economic development tax incentive* as defined in statute. However, the bill does not include the items required by the incentive guidelines, including:

- a statement of purpose;
- an agency to evaluate policy goals;
- reporting requirements;
- mandatory review; and
- tracking of job creation.

The FIR suggests that HB 388 "may benefit from language that requires booksellers to obtain documentation from the instructor or institution to show that the college textbooks and [course] materials purchased were required."

Related Bills:

None as of February 24, 2011.