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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/27/13

SPONSOR Gonzales LAST UPDATED \_\_\_\_\_ HB 532

SHORT TITLE School District Liens on Certain School Buses SB \_\_\_\_\_

ANALYST Cerny

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		(Indeterminate) See analysis	(Indeterminate) See analysis	(Indeterminate) See analysis	Recurring	District Operating Budgets & Transportation Emergency Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)

Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 532 (HB 532) amends Section 22-8-27D NMSA 1978 to require a school district to file a lien on every contractor-owned school bus under contract.

Current statute requires that a school district must file a lien only on contractor-owned school buses on which the contractor owes money.

### FISCAL IMPLICATIONS

HB 532 carries no appropriation.

Contractor-owned buses have been sold when a contract is not renewed or terminated and in some cases the school district or the state may have been required purchase new equipment. Other contractors have been unable to reimburse the state for overpayment of rental fees when contracts were terminated or not renewed.

Enactment of HB 532 would mitigate the state's vulnerability to collection of monies owed and result in cost savings. However, the actual cost of these savings is not possible to predict since there is no way of knowing how many situations that would trigger such savings will have been avoided.

### **SIGNIFICANT ISSUES**

The state pays a school bus contractor rental fees for 5 years on a newly purchased bus and the contractor is obligated to run the bus for a 12-year term. If a contractor's contract is terminated or not renewed the Secretary of Education calculates the remaining number of years that the bus could have be used (based on a 12-year replacement cycle) to determines the value of that use. The school district then deducts an amount equal to that value from any remaining amount due on the contract. If no balance remains on the contract, the contractor is required to reimburse the school district an amount equal to the value calculated.

Section 22-8-27D NMSA 1978 was enacted during the 2009 legislative session requiring school districts to file a lien on every contractor-owned school bus under contract on which money was owed on the vehicle. This section of statute was added at that time because it was proving difficult for school districts to collect any overpayment made for rental fees from contractors when a school bus contract was terminated or non-renewed. Further, in many cases school buses were not transferred to the school district or succeeding contractor, resulting in increased costs to replace necessary school buses (see Other Substantive Issues).

HB 532 requires school districts to file a lien on *all* school buses owned by a contractor to ensure that these buses remain available to school districts to provide to-and-from transportation to students, whether money is owed on the vehicle or not. Requiring school district to file a lien on *every* contractor bus will prevent contractors from selling the school buses without paying rental overpayments and will prevent the state from having to purchase new buses.

The lien on every contractor-owned school bus will reflect the 12-year obligation regardless whether the contractor owes money or not on the bus. The Department of Finance and Administration (DFA) states in their analysis that enactment of HB 532 could protect the school district in the instance of a contractor declaring bankruptcy.

The PED analysis states that requiring a school district to file a lien on every bus also will prevent a contractor from selling school buses prior to the 12 year replacement because the statute requires that the lien is released by the school district only when the Department authorizes replacement of the school bus or when the contractor has paid reimbursements due.

### **OTHER SUBSTANTIVE ISSUES**

The PED in their analysis states that the average price of a new school bus is approximately \$85.0. It also cites two instances which occurred prior to the enactment of the current statute that requires liens on contractor-owned school buses on which money is owed:

1. A past court case challenged the school district's ability to collect overpayments as a result of a contract non-renewal rather than a contract termination. The school district prevailed in this case; however, full judgment (interest) was not collected. The contractor did not sell its school buses to the district, resulting in new buses being purchased for the district.

2. Another recent court case involved a contract non-renewal. The school bus equipment was used to secure a bank loan and was not available for transfer to the district. The district did not take legal action against the contractor for the overpayment because it appeared that the contractor did not have the resources to return any overpayment. The district decided to operate the transportation services, resulting in approximately \$1,600,000 in new school bus purchases.

CAC/svb