

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** HB 345

**51st Legislature, 2nd Session, 2014**

**Tracking Number:** .196402.2

**Short Title:** School Finance “Local Revenue”

**Sponsor(s):** Representative Mimi Stewart

**Analyst:** Mark Murphy

**Date:** February 13, 2014

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**Bill Summary:**

HB 345 amends the *Public School Finance Act* to expand the definition of “local revenue” for calculation of a school district’s State Equalization Guarantee (SEG) to include 75 percent of any receipts provided to the school district for noncapital purposes and derived from locally imposed gross receipts tax.

The provisions of HB 345 take effect on July 1, 2014.

**Fiscal Impact:**

HB 345 does not contain an appropriation.

**Fiscal Issues:**

By adding another source to the definition of “local revenue” within the *Public School Finance Act*, HB 345 requires the state, in determining SEG distributions, to take credit for 75 percent of receipts provided to the school district for noncapital purposes from a locally imposed gross receipts tax.

***Current Law***

Current provisions of the *Public School Finance Act* define the term “local revenue” as follows [Section 22-8-25 NMSA 1978]:

“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 and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978].

In determining the SEG distribution amount, this section of the *Public School Finance Act* requires:

- the calculation of local revenues, as defined; and
- the deduction of local revenues from the program cost total.

### ***State Definition vs. Federal Definition***

The definition of “local revenue” in the *Public School Finance Act* differs from the definition of “local tax revenues” as stated in the 34 Code of Federal Regulations (CFR) 222.161 pertaining to federal revenue received by New Mexico. This difference would continue to persist if the provisions of HB 345 are enacted; however, it appears that the definitions would be more aligned than they are under current law. There may be additional advantages, such as greater clarity of what needs to be included in the computation of the SEG, in further aligning the definition in state law with that in federal law.

The sponsor may wish to consider modifying the language in HB 345 to further align with the definition of “local tax revenues” in federal law.

### **Substantive Issues:**

In 2006, the Legislature passed the *Regional Spaceport District Act*, which required:

- each governmental unit to enact a municipal or county regional spaceport gross receipts tax prior to December 31, 2008;
- at least 75 percent of the tax revenue received by each governmental unit to be used for the financing, planning, designing, engineering, and construction of a regional spaceport; and
- not more than 25 percent of the tax revenues to be used by the governmental unit enacting the tax for spaceport-related projects as approved by resolution of the governmental unit.

Prior to the December 31, 2008 deadline, both Doña Ana and Sierra counties enacted county regional spaceport gross receipts taxes to take effect in January 2009. According a table by the Taxation and Revenue Department, *Enactment Dates of Local Option Taxes*, municipal regional spaceport gross receipts taxes have not been enacted, and the ones in Doña Ana and Sierra counties are the only two county regional spaceport gross receipts taxes.

The component of the tax that pertains to the SEG and funding of public education appears to lie within the “not more than 25 percent” for “spaceport-related projects as approved by resolution of the governmental unit.”

### ***Resolution from Doña Ana County***

The resolution passed by the County Commission in Doña Ana County on March 13, 2007 resolves the following:

- that the Doña Ana County Commission pledges to grant the 25 percent “spaceport-related” funding to the Hatch Valley Public Schools, the Gadsden Independent Schools,

and the Las Cruces Public Schools for support and development of special programs that focus on math, science, and technology education.

### ***Resolution from Sierra County***

The resolution passed by the County Commission of Sierra County on February 7, 2008 specifies that:

- as the flow-through agency, Sierra County would disperse the 25 percent funding to the county's one school district prorated on a per pupil 40<sup>th</sup> day enrollment count; and
- the local school district would ensure such funds would support expansion and improvement of existing science, engineering, technical, mathematics programs, and rigorous academic programs to support a strong, technically literate workforce.

### ***Federal Requirements***

According to 34 CFR 222.161-163, New Mexico is authorized by the US Department of Education (USDE) to take credit for certain types of federal revenue while determining its final state SEG distribution to local districts because:

1. the SEG distribution is considered to be an equalized funding formula; and
2. the state takes credit for federal revenues (i.e. 75 percent) in the same proportion as the share that local tax revenues covered under a state equalization program are of total local tax revenues (i.e. 75 percent).

New Mexico's SEG distribution continues to be recognized as an equalized funding formula by (1) meeting the requirements of a "disparity standard" each year; and (2) demonstrating that the state is taking credit for federal revenue in proportion to local revenue.

As noted under "Fiscal Issues," above, the definition of "local tax revenue" in federal regulation, however, differs from the way the state defines it in the *Public School Finance Act*. According to 34 CFR 222.161, federal law defines "local tax revenues" as:

*Local tax revenues* means compulsory charges levied by an LEA [local education agency] or by an intermediate school district or other local governmental entity on behalf of an LEA for current expenditures for educational services.

Additionally, 34 CFR 222.169 specifies that:

Local revenues that can be excluded from the proportion computation are those received from local non-tax sources such as interest, bake sales, gifts, donations, and in-kind contributions.

Based on these components of federal regulation, it is possible that federal regulations require New Mexico to take credit for local option gross receipts taxes imposed by municipalities or counties on behalf of a school district if the state is to continue taking credit for federal revenues.

## **Background:**

### ***New Mexico's State Equalization Guarantee***

Enacted by the Legislature in 1974, the SEG distribution (also known as the public school funding formula) is based on a model developed by the National Education Finance Project in the late 1960s and early 1970s. The system supports the Legislature's policy that all students are entitled to an equal educational opportunity despite differences in local school district wealth. The formula is student-driven and recognizes different costs for various educational programs.

Designed to distribute operational funds to school districts and state-chartered charter schools in a noncategorical manner, the SEG distribution provides for local school district and charter school autonomy. Because SEG distributions received by local school districts and state-chartered charter schools are not earmarked for specific programs, these entities may spend their distributions according to local priorities.

In making the SEG distribution, the funding formula is designed to ensure that overall operating revenue in school districts and state-chartered charter schools equals at least the program cost of the school district or state-chartered charter school, as determined by the funding formula. In order to accomplish this, the funding formula takes certain credits and deductions for other revenue sources of operational dollars as applicable to each school district and state-chartered charter school. These include 75 percent of:

- receipts from local 0.5-mill levy property taxes;
- receipts from the assessed value of products severed and sold in the school district under the *Oil and Gas Ad Valorem Production Tax Act*;
- receipts upon the assessed value of equipment in the school district as determined under the *Oil and Gas Production Equipment Ad Valorem Tax Act*;
- most federal impact aid funds; and
- federal forest reserve funds.

School districts and state-chartered charter schools retain 25 percent of these funds to use at their discretion for operational or other purposes.

## **Committee Referrals:**

HEC/HAFC

## **Related Bills:**

HB 13a *School Equalization Guarantee "Local Revenue"*

HB 19a *Update School Finance At-Risk Index*

HB 35a *Additional Funding Units for Some Schools*

HB 37 *Equalization Distribution to Certain Schools*

HB 122 *Licensed School Employee Program Units*

SB 54 *Public School Funding Adequacy*

SB 172 *Spaceport Gross Receipts Tax Uses*

SB 310 *School District "Local Revenue"*