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FISCAL IMPACT REPORT

ORIGINAL DATE 2/23/07
 LAST UPDATED 3/16/07 HB 1012/aSFC/aSF#1

SPONSOR Gonzales

SHORT TITLE School Bus Fuel Tax Deductions SB _____

ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	(6,625)	(6,625)	Recurring	General Fund
	(200)	(200)	Recurring	Local Governments
	(13)	(13)	Recurring	State Road Fund
	(2)	(2)	Recurring	Local Government Road Fund
	(0.245)	(0.245)	Recurring	Municipal Arterial Fund
	(0.044)	(0.044)	Recurring	Aviation Fund
	(0.022)	(0.022)	Recurring	Motor Boat Fuel Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to SB317, HB1138, SB284

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation
 Public Education Department
 Taxation and Revenue Department
 Legislative Education Study Committee

SUMMARY

Synopsis of SF#1

House Bill 1012 as amended by the Senate Finance Committee was amended on the Senate Floor changing the definition of “qualified school” in the tuition scholarship tax credit (section 4) and

changing the eligibility for the high needs school retention credit for the Level 2 teachers. The qualified school definition was refined to require schools have academic content and performance standards at least equal to those adopted by the public education department. The change also requires a qualified school to be assessed annually by PED provided that the assessments are not more expensive than those for public schools.

Synopsis of SFC Amendment

The Senate Finance Committee amended House Bill 1012, adding several new tax provisions.

Certain Scholarship Donation Tax Credits. This provision would provide an income tax credit for contributions to private elementary and secondary schools in New Mexico. Credits totaling up to \$500 would be allowed in any tax year for contributions to organizations who provide scholarships for non-governmental primary and secondary schools. At least 75 percent of the scholarships the organization provides must be for low-income students. These are referred to as “tuition scholarship tax credits” in the proposal. The credit would not be refundable. They would not be allowed if the associated donations are deducted against federal income tax obligations.

Home Schooling Income Tax Credit. This provision provides a credit against personal income tax liability of \$175 for expenses attributable to tutoring or home schooling. The credit is allowed for taxpayers whose dependent

- attended a public school and was also tutored on a subject included in the public school curriculum,
- or
- was home schooled,
- and
- whose dependent was or would have been claimed as a dependent on the resident’s federal income tax return.

The effective date is January 1, 2007, and so is applicable to the 2007 tax year.

Teacher Retention Credit. This provision creates a tax credit called the “high-needs schools teacher tax credit” for licensed teachers who teach at schools identified by the Public Education Department as “high-needs.” The credit is against personal income tax liability and can be carried forward for up to three years. The credit is \$1,500 for teachers who have held a level 2 license at least half of the taxable year and \$2,000 for teachers who have held a level 3-A license for at least half of the taxable year. A teacher must have taught at the school for at least half of the taxable year. The maximum credit goes to teachers who taught for the entire school year and half of the credit goes to teachers who have taught at least half of the full school year.

PED will develop criteria for determining high-needs schools based on academic proficiency, poverty indicators, and other factors to be identified. No more than 1,900 teachers shall be eligible in a tax year.

Synopsis of Original Bill

House Bill 1012 would exempt gasoline used for school buses when the gasoline is purchased as part of a contract with the Public Education Department (PED) or with a school district. Applicable gasoline is also exempt from gross receipts and compensating taxes. The Taxation

and Revenue Department (TRD) can refund any gasoline tax paid provided that a taxpayer submit satisfactory proof and the claims are submitted no more frequently than quarterly and for 100 gallons or more.

FISCAL IMPLICATIONS

(000s)	FY08	FY09	FY10		
School Bus Fuel Tax Deductions	(300)	(300)	(300)	Recurring	General Fund
	(200)	(200)	(200)	Recurring	Local Governments
	(13)	(13)	(13)	Recurring	State Road Fund
	(2)	(2)	(2)	Recurring	Local Government Road Fund
	(0.245)	(0.245)	(0.245)	Recurring	Municipal Arterial Fund
	(0.044)	(0.044)	(0.044)	Recurring	Aviation Fund
	(0.022)	(0.022)	(0.022)	Recurring	Motorboat Fuel Fund
Certain Scholarship Donation Tax Credits	(2,100)	(2,100)	(2,100)	Recurring	General Fund
Home Schooling Income Tax	(1,225)	(1,225)	(1,225)	Recurring	General Fund
Teacher Retention Tax Credit	(3,000)	(3,000)	(3,000)	Recurring	General Fund
TOTAL GENERAL FUND	(6,625)	(6,625)	(6,625)	Recurring	General Fund

Certain Scholarship Donation Tax Credits. The fiscal impact has been calculated by assuming that 7,500 of the eligible taxpayers would take the full credit and 6,000 would take half of the credit. Estimates of numbers of claimants were based partially on New Mexico personal income tax data. Approximately 200,000 New Mexico returns reported sufficient income to claim at least a portion of the credit. Roughly four percent of New Mexico’s 360,000 primary and secondary school students attend accredited non-governmental schools. The Senate Floor amendment may lower the fiscal impact if they have difficulty getting assessed annually by PED.

Home Schooling Income Tax Credit. Public Education Department (PED) has reported there are 7,000 home schooled students recognized by PED. The Senate Floor amendment provides a \$175 per pupil credit that is refundable making the impact \$1.3 million in FY08.

Teacher Retention Credit. PED estimates that they will be able to identify 1,900 teachers who would receive the credit. Assuming half are Level 2 and half are Level 3, the full credit will reduce personal income tax collections by \$3.325 million per year. Assuming an average salary of \$43,000, the tax liability is approximately \$980 so for most taxpayers they will carry the credit forward. In FY08, the credit is expected to reduce revenues by \$3 million with an insignificant part of the credit carrying forward to FY09. The Senate Floor amendment does not change the impact as the cap of 1,900 teachers should be narrow enough to limit eligibility to teachers who have held the Level 2 license for three or more years.

School Bus Fuel Tax Deduction. Based on data provided by PED, school buses use approximately 100,000 gallons of gasoline per year that is not already exempted. At a rate of \$0.17 per gallon, the annual fiscal impact is a \$17,000 reduction in the gasoline tax revenues. Gasoline revenues are distributed to a variety of funds as Table one shows.

Fiscal Impact by Fund for Gas Tax (FY08)

State Road Fund	\$ 12,966
Counties and Municipalities	1,765
County Govt. Road Fund	979
Municipal Road Fund	979

Municipal Arterial Fund	245
Aviation Board	44
Motor Boat Fuel Tax Fund	22

\$ 17,000

GRT deduction for special fuel:

Based on information provided by the N.M. Public Education Department, total fuel consumption by private contractors operating public school buses is estimated at 3.0 million gallons. Assuming an average price of \$2.50 per gallon, taxable gross receipts on this fuel is approximately \$7.5 million. At the statewide average tax rate of 6.6%, the new deduction would reduce GRT collections by about \$500 thousand. 60% of this would be General Fund revenue and the remainder Local Governments.

Fiscal Impact for Diesel Fuel exemption from GRT

	FY08
General Fund	\$300,000
Local Governments	200,000

SIGNIFICANT ISSUES

Certain Scholarship Donation Tax Credits. The Senate Floor amendment will require PED to assess the non-governmental schools as well as determine if the educational content is at least equal since accreditation may or may not meet this criteria alone. An otherwise qualified school may not want to submit to PED annual assessments which would dampen the fiscal impact. PED will also have an additional administrative burden as they do not currently assess any school but rather the state pays for schools to be assessed by third party assessors.

Organizations receiving the contributions must be exempt from federal taxation due to Section 501(c)(3) of the Internal Revenue Code, provide financial scholarships to students, and spend 100 percent of their tax-credit-qualifying revenues for scholarships at qualified schools. A qualified school is defined as “an accredited nongovernmental elementary or secondary school in New Mexico”.

The tuition credit would be for contributions to an organization that provides scholarships for attendance at private schools, including religious schools. Whether state support of religious and private schools would pass a constitutional challenge is a significant issue. The Arizona credit faced such a challenge in 1998 and withstood it. PFAW also reports that 25 of the 35 organizations in Arizona set up to receive contributions provide tuition to religious schools.

According to an Arizona Department of Revenue report on the tuition credit, the largest single scholarship from one of the organization’s set up to receive contributions went to a school for emotionally disabled children. The report which includes data on all schools that received scholarships from organizations shows that there were 345 private schools who received scholarships from organizations. The list includes mostly religious schools of all faiths. The report can be found at http://www.azdor.gov/ResearchStats/private_schl_credit_report_2006.pdf.

Home Schooling Income Tax Credit. PED reports (in its analysis of SB 284):

Under the Public School Code, "Home School" means the operation by a parent of a school-age person who instructs a home study program that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science (Section 22-1-2E, NMSA, 1978). Section 22-1-2.1 NMSA, 1978 requires home school parents to: (1) notify the State Superintendent [Secretary of Education] in writing of the establishment of a home school; (2) maintain records of student immunization; and (3) possess at least a high school diploma or its equivalent.

The burden of proof of home school establishment will be on the parent; however, since parents turn to the PED for verification of home schooling registration, this bill is likely to result in a significant increase in staff time needed to respond to home school requests, search the database and process the verification requests.

Teacher Retention Credit. PED reports:

One significant issue is the determination of criteria identifying a "High Needs School." PED will utilize data that address academic proficiency, the percent of poverty in the school population and other factors that will help prioritize the schools and teachers eligible for the tax credit within the maximum number that can be selected.

Academic proficiency would be determined by the percent of students in the school that are proficient in reading and mathematics as evidenced by standardized assessments. Poverty would be identified by the percent of students who are eligible for free-and-reduced lunch. Other factors could be considered.

A system of collecting data from public K- 12 schools, including charter schools, tribal, Bureau of Indian Affairs (BIA) schools or BIA contract schools, identified by the PED will be developed.

The PED's Educator Quality Division will be responsible for administering the PED roles and responsibilities related to this bill.

It is unclear how PED will go about selecting the teachers who will be eligible for the credit and may create confusion if teachers are deemed eligible but do not have the tax liability to take full advantage of the credit.

School Bus Fuel Tax Deduction. Although most school buses are operated as fleet and buy gasoline in bulk from wholesalers, there are some that will buy from suppliers who charge the gasoline tax. The ability to refund to these operators the amount they pay is an important feature of this legislation.

There are similar provisions for the special fuels tax which covers diesel so with HB1012.

NF/mt