

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill No:** SB 412

**49th Legislature, 1st Session, 2009**

**Short Title:** Education Gross Receipts Surtax

**Sponsor(s):** Senator Cynthia Nava and Others

**Analyst:** Kathleen Forrer

**Date:** March 4, 2009 (revised)

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**Bill Summary:**

SB 412 adds new sections to the *Tax Administration Act* and to the *Gross Receipts and Compensating Tax Act* to:

- add an “education surtax” of 0.75 percent to both the state Gross Receipts Tax and the statewide Compensating Tax; and
- require that the net receipts attributable to the education surtax be distributed to the Public School Fund.

The effective date of the provisions in SB 412 is July 1, 2009, contingent upon the enactment of legislation of the 1<sup>st</sup> Session of the 49<sup>th</sup> Legislature that provides “a new method for determining the state equalization guarantee distribution to public schools.”<sup>1</sup>

**Fiscal Impact:**

SB 412 makes an appropriation in the sense that it designates the net receipts attributable to the proposed education surtax for distribution to the Public School Fund.

**Fiscal Issues:**

Both the current state Gross Receipts Tax and the current Compensating Tax rates are 5.0 percent.

The Taxation and Revenue Department estimates that the education surtax and the increase would generate an additional \$391.9 million in revenue for FY 10, \$404.3 million for FY 11, \$421.3 million for FY 12, and \$439.1 million for FY 13.

In January 2009, American Institutes for Research (AIR), the contractor for the funding formula study, provided an updated estimate of the additional cost of funding marginal sufficiency<sup>2</sup> and the first year of the three-year hold harmless provision for school districts and charter schools that may see their program cost reduced. This estimated additional cost is \$345.3 million.

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<sup>1</sup> HB 331a amends and repeals existing sections of and adds new sections to the *Public School Code* to provide for the implementation of a new funding formula for public schools in FY 11.

<sup>2</sup> Marginal sufficiency is the difference between the projected statewide cost of providing a sufficient education as determined by the funding formula study and the current statewide program cost.

**Issues:**

During the 2008 interim, all 89 school districts were invited to work with the Legislative Education Study Committee to examine the potential impact on school district programs and student achievement of the public school funding formula initially proposed during the 2008 legislative session. Part of that discussion centered around potential revenue sources for the additional revenue needed to implement the proposed formula. Most school districts stated that their communities would support an increase in the Gross Receipts Tax if there were assurances that the revenue would be used exclusively to support the sufficiency funding needed to implement the proposed funding formula.

**Technical Issues:**

In its analysis of SB 412, the Taxation and Revenue Department notes that, although New Mexico imposes a 5.0 percent compensating tax on both tangible property and services, the proposed education surtax is limited to tangible property.

**Related Bills:**

SB 389 *Corporate Tax to Public School Fund*  
HB 331a *Public School Funding Formula*  
HB 346 *Education Gross Receipts Surtax (0.5%)*