

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: *SB 518

51st Legislature, 1st Session, 2013

Tracking Number: .192566.1

Short Title: Tax Distribution & Transfer Corrections

Sponsor(s): Senator Stuart Ingle

Analyst: Ian Kleats

Date: February 25, 2013

Bill Summary:

Applicable to determinations made by the Secretary of Finance and Administration on or after May 1, 2013, SB 518 amends two sections of law, the first within the *Tax Administration Act* and the second pertaining to the Appropriation Contingency Fund, to revise the procedure for correcting distributions and transfers of revenue collections to political subdivisions.

Among its provisions, SB 518:

- removes provisions allowing a political subdivision to recover net negative distribution or transfer adjustments stemming from previous erroneous transfers through installment payments;
- allows political subdivisions three methods to recover from net negative distribution or transfer adjustments stemming from non-erroneous causes or a reduction of a single large taxpayer's liability;
 - (1) drawing funds from the Appropriation Contingency Fund¹ in an amount sufficient to offset the negative distribution;
 - (2) entering into an installment agreement with the Taxation and Revenue Department (TRD) to reduce future distributions or transfers; or
 - (3) decreasing the distribution or transfer in the ensuing month by the full amount of the negative distribution; and
- authorizes expenditures from the Appropriation Contingency Fund to fund certain decreases in the distribution of revenue to political subdivisions.

SB 518 further requires that the TRD Secretary must obtain approval from the state Board of Finance to use funds from the Appropriation Contingency Fund and must verify that the subject political subdivision:

- cannot reasonably mitigate the distribution reduction with reductions to discretionary expenditures on services, procurements, and programs; and
- that the reduction would reduce available revenue for discretionary spending by more than 50 percent during the ensuing 12-month period.

¹ This may affect certain funds used for public education. For additional discussion, see **Fiscal Issues**.

*SB 518 contains an emergency clause.

Fiscal Impact:

SB 518 does not contain an appropriation. The table below illustrates the revenue impact as estimated by LESC staff. The fiscal impact has been displayed as a negative revenue impact to the Appropriation Contingency Fund and a corresponding positive revenue impact to political subdivisions, but it could possibly be viewed as an appropriation from that fund to the political subdivisions.

| Estimated Revenue Impact* | | | | R or NR** | Fund(s) Affected |
|---------------------------|-------|-------|-------|-----------|--------------------------------|
| FY 13 | FY 14 | FY 15 | FY 16 | | |
| (***) | (***) | (***) | (***) | R | Appropriation Contingency Fund |
| *** | *** | *** | *** | R | Municipalities and Counties |

* In thousands of dollars. Parentheses () indicate a revenue loss.

** Recurring (R) or Non-Recurring (NR).

*** Indeterminate revenue impact.

No bill analysis by the TRD was available as of the writing of this analysis. TRD could have additional information on the number of local governments for whom the provisions of SB 518 would apply and the amount of anticipated distributions that could impact the Appropriation Contingency Fund.

Fiscal Issues:

Expenditures from the Appropriation Contingency Fund are limited by statute to include those expenditures:

- specifically authorized by the Legislature; or
- to deal with natural disasters in order to preserve public safety and well-being; but
- only in the event there is no surplus of unappropriated money in the General Fund in the amount authorized by the Legislature.

The table below illustrates the balance of the Appropriation Contingency Fund for FY 11 through FY 13. It includes the beginning balance in each fiscal year, the transfers into or out of the fund, and the ending balance for each fiscal year. Data on the fund were obtained from the *August 2012 General Fund Financial Summary* published by the Department of Finance and Administration, which was the most recent financial summary available.

| APPROPRIATION CONTINGENCY FUND | Audited FY 2011 | Estimated FY 12 | Estimated FY 13 |
|------------------------------------|-----------------|-----------------|-----------------|
| Beginning balance | \$29.6 | \$5.2 | \$29.2 |
| Disaster allotments | (28.8) | (16.0) | (16.0) |
| Other appropriations | - | - | - |
| Transfer from Oper. Reserve to ACF | - | 40.0 | - |
| Revenue and reversions | 4.3 | - | - |
| Ending Balance | \$5.2 | \$29.2 | \$13.2 |

Source: *August 2012 General Fund Financial Summary*, Department of Finance and Administration

This analysis does not consider money in the separate account of the Appropriation Contingency Fund dedicated specifically for the purpose of implementing and maintaining educational reform, commonly known as the “education lockbox,” because that money has a dedicated purpose inconsistent with the provisions of SB 518. However, it appears that no provision in current law would prevent the expenditure of those monies in order to fulfill the statutory purposes of the Appropriation Contingency Fund, including the use proposed by SB 518.

If FY 14 disaster allotments meet or exceed the amounts dedicated in FY 12 and FY 13, there would be no funds available for use in the manner proposed by SB 518 without additional appropriations or revenue being dedicated to the Appropriation Contingency Fund.

Because appropriations, revenue, and reversions to the Appropriation Contingency Fund occur on an inconsistent basis, there can be no guarantee that funds would be available to cover the cost associated with SB 518. The sponsor may wish to consider that funds used to mitigate net negative distributions originate from the Small Cities Assistance Fund and the Small Counties Assistance Fund instead. This could ensure that funds are available when needed.

SB 518 provides no mechanism through which the distribution from the Appropriation Contingency Fund may be repaid by a political subdivision when revenue returns to a level that would allow such a repayment without adversely impacting discretionary services.

Substantive Issues:

Any local government could be vulnerable to unexpected changes in the distribution of revenue. However, small municipalities and counties are especially susceptible because even small revenue changes can affect their ability to provide basic services necessary for public health and safety.

In fact, the vulnerability of small political subdivisions could be exacerbated by the actions of large taxpayers within their political boundaries. By claiming tax credits in current law or utilizing newly enacted deductions or exemptions, the revenue attributable to that taxpayer could vary dramatically from month to month or year to year.

Current law allows the TRD Secretary to enter into agreements with a political subdivision to spread out negative distributions only in the case of an “erroneous” distribution. SB 518 recognizes that the action of taxpayers, not just an erroneous transfer, could affect municipalities and counties, and it would provide a way for those political subdivisions to smooth the revenue impact over a longer period.

Technical Issues:

On Page 6, Subsection D(1)(b) refers to “an amount equal to the twenty-fifth percentile of the most recent twelve months of positive distributions to that political subdivision.” It is unclear to what “twenty-fifth percentile” is intended to refer. As written, it appears to mean the full amount of the monthly distribution situated at the 25th percentile of a rank-ordered list of the previous 12 months of distributions.

On Page 6, lines 4, 6, and 10, the bill uses “distribution” without also accounting for transfers. The sponsor may wish to amend those lines to include the language, “or transfers,” which would make those subsections consistent with other references within the bill.

On Page 7, lines 6-11, the option for repaying a net negative distribution or transfer in Subsection D(3) refers to a “taxpayer’s reduced tax liability pursuant to this section.” However, this section pertains to net negative distributions or transfers for *any* reason other than an error of the TRD. It is unclear whether this language should be broadened to incorporate adjustments to distributions that occur for reasons other than changes to amendments to a taxpayer’s liability, which is a specific instance addressed more fully in Subsection E.

Committee Referrals:

SCORC/SFC

Related Bills:

*HB 561 *Tax Distribution & Transfer Corrections* (Identical)