

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 129

52nd Legislature, 1st Session, 2015

Tracking Number: .198673.1

Short Title: School District Liens on Some School Buses

Sponsor(s): Senator Mimi Stewart

Analyst: David Craig

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FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

SB 129 amends the *Public School Finance Act* to require school district liens on contractor-owned school buses under contract to the school district.

Fiscal Impact:

SB 129 does not contain an appropriation.

Fiscal Issues:

Realizing that public school transportation funding had not been examined since the late 1990s, the Legislative Education Study Committee (LESC) chair appointed the LESC Subcommittee on School Transportation, which met in both the 2012 and 2013 interims. One item of discussion was a bill clarifying requirements for a school district to file a lien on every contractor-owned school bus, not only those on which the contractor owes money. During the 2012 subcommittee, LESC staff provided testimony that General Fund appropriations support the purchase of contractor-owned school buses which in current law are established as rental fees paid to a contractor over a five-year period.

According to the bill analysis by the Public Education Department (PED):

- the state pays a school bus contractor for five years on a newly purchased bus and the contractor is obligated to run the bus for a 12-year period;
- if a contractor's contract is terminated or not renewed:
 - the Secretary of Public Education determines the remaining number of years that the bus could be used based on a 12-year replacement cycle and calculates a value reflecting that use;
 - the school district then deducts an amount equal to that value from any remaining amount due on the contract; and
 - if no balance remains on the contract, the contractor reimburses the school district an amount equal to the value calculated;
- without a lien in place at all times to protect the state's investment, a contractor could sell school buses or use them as collateral for loans, precluding the state's accessing them in the event a contract is not renewed or is terminated;

- causing the state to purchase new equipment while trying to acquire the contractor's buses;
- the average price of a new school bus is approximately \$85,000; and
- requiring a lien on all school buses owned by a contractor ensures that the buses remain available to school districts to provide to-and-from transportation to students.

By requiring a school district to file a lien on every contractor-owned bus for the 12-year obligation, regardless of whether or not the contractor owes money on the bus, SB 129 may:

- aid school districts in collecting any reimbursement calculated by the Secretary of Public Education when a contract ends or a contractor exits the business; and
- protect the state's investment in school buses when a contract ends or a contractor exits the business.

Substantive Issues:

According to the bill analysis by PED:

- in 2009, legislation was enacted to amend the provisions in the *Public School Finance Act* for transportation equipment to require school districts to file alien on every school bus under contract that the contractor owned and on which the contractor owed money;
- these amendments were added because:
 - it was difficult for school districts to collect any overpayment made for rental fees from contractors when a school bus contract was terminated or not renewed;
 - in many cases school buses were not transferred to the school district or succeeding contractor, resulting in increased costs to replace necessary school buses; and
 - requiring school districts to file a lien on every contractor bus will prevent contractors from selling the school buses without paying the overpayment and will prevent the state from having to purchase new buses;
- the issue with the current statute is that the liens are required to be filed only on contractor-owned buses on which the contractor owes money;
- there are several instances where a contractor will pay cash for a bus or the bus will be paid off;
- in these cases a lien is not required to be filed; and
- the majority of contractors finance a school bus for five years, which is the same length of time they will be receiving rental fees from the state, but after the five years the contractor will not owe any money; therefore, the district will not be required to file a lien because the contractor owes nothing.

Finally, PED's bill analysis provides two past instances that occurred prior to the requirement of liens on school buses:

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 instance involved a contract non-renewal. Because the school bus was used to secure a bank loan, it 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 \$1.6 million in new school bus purchases.

Background:

Transportation Funding

Provisions of the *Public School Finance Act* determine the funding elements of the state's transportation program. The following is a summary of the provisions of the *Public School Finance Act* that relate to the calculation and allocation of the transportation funding formula.

- **The transportation distribution** as it relates to a school districts' or state-chartered charter school's transportation allocation, including provisions that require:
 - allocations to only be used to-and-from school transportation costs of public school students in grades K-12; for three- and four-year-old developmentally disabled students;
 - 50 percent of any excess funds to revert to the transportation emergency fund;
 - 25 percent of the remaining excess to only be used for to-and-from transportation except for salaries and benefits;
 - the remaining 25 percent of excess to be used for any other transportation services except salary and benefits;
 - if the amount of an allocation exceed distributions, each school district or state-chartered charter school to have their allocations reduced in the proportion to the total state distribution; and
 - a local board or governing body of a state-chartered charter school to seek approval to provide additional transportation services.
- **The purchase of school bus transportation equipment**, including the:
 - replacement of buses on a 12-year cycle including petitions to replace buses early;
 - payment of rental fees for contractor-owned buses and replacement of buses on a 12-year replacement cycle;
 - process by which a school district files a lien against contractor-owned school buses with the motor vehicle division of the taxation and revenue department;
 - rental period limit for buses to five years; and
 - provisions to allow PED to recoup money owed to a school district by a bus contract that is terminated.
- **Reporting requirements** for allocations that the local board or governing body of a state-chartered charter school must report on the first reporting date of the current year, including the:
 - number and designation of bus routes;
 - number of miles by road surface;

- number of students transported on the first reporting period and adjustments for special education on December 1;
 - projected students for the next year;
 - seating capacity, age, and mileage of each bus; and
 - number of total miles traveled for each per capita feeder route.
- This section of law also requires PED to:
 - base allocations for the first six months of a school year on the tentative transportation budget for the current fiscal year;
 - adjust allocations for the remainder of the year based on the amount the school district is to receive on the November 15 reporting date; and
 - make installment payments to districts and state-chartered charter schools based on their approved allocations.
 - **The calculation of the transportation allocation** that includes:
 - a base amount to which is added a variable predicted amount calculated from a regression analysis of site characteristics and predictor variables multiplied by number of days; and
 - then multiplied by an adjustment factor which is calculated by subtracting the amount of the sum of the base and variable amounts from the total transportation appropriation and dividing by the sum of the base and variable and then adding one.
 - **Distributions from the transportation emergency fund** in instances of transportation emergencies.

Committee Referrals:

SEC/SJC

Related Bills:

SB 201 *School Bus Fuel Gross Receipts*
 SB 416 *School Transportation Boundary Agreements*
 HB 73 *School Bus Security & GPS Systems*
 HB 164 *School Transportation Info Reporting*
 HB 166 *Charter School Transportation Agreements*