

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** SB 131

**52nd Legislature, 1st Session, 2015**

**Tracking Number:** .197925.3

**Short Title:** Local Gov't IRB Notices & Impacts

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

**Analyst:** Ian Kleats

**Date:** February 20, 2015

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**Bill Summary:**

SB 131 amends the *Industrial Revenue Bond Act* and the *County Industrial Revenue Bond Act* and adds a new section to each act to require that:

- municipalities or counties proposing to issue industrial revenue bonds (IRBs) notify and receive comment from all local public bodies with property taxing authority that will be affected by the issuance of the IRBs; and
- municipalities or counties negotiate with the company benefiting from the proposed IRB a payment in lieu of taxes (PLT) acceptable to a school district significantly impacted by the project (see “Technical Issues,” below).

With respect to the process whereby school districts could receive PLT for IRB projects, SB 131:

- defines “significant impact” to mean:
  - an increase of more than 15 percent in the school district’s membership over a three-year period; or
  - an increase in the capital costs, payable from general obligation bonds, of meeting the projected membership growth that would result in the school district exceeding 75 percent of its general obligation bonding capacity;
- requires that the municipality or county and the company proposing the IRB project determine the projected impact of the project on school district membership upon the request of the local school board of a potentially affected school district;
- requires the municipality or county to negotiate with the company benefiting from the proposed IRB a PLT acceptable to the school district if the IRB project is projected to result in a significant impact (see “Technical Issues,” below); and
- allows the local school board to vote to waive the requirement for a PLT.

Because SB 131 does not carry an effective date provision, if enacted, the bill would become effective on June 19, 2015.

**Fiscal Impact:**

SB 131 does not contain an appropriation.

## **Fiscal Issues:**

Property tax is the school district revenue stream most likely to be affected by an IRB, and most property tax revenue is used primarily for capital expenditures, with a small portion available for operational expenditure. Mill levies for public schools include:

- any number of mills<sup>1</sup> necessary to cover the debt service on general obligation bonds issued by a school district for statutorily defined uses;
- a statutory rate of 0.5 mills for general operating purposes;
- up to 10 mills for the purposes of the *Public School Buildings Act*; and
- up to 2.0 mills for the purposes of the *Public School Capital Improvement Act*.

According to data from the Capital Outlay Bureau at the Public Education Department (PED) on school district general obligation bonding capacity as of December 31, 2014:

- thirty-two of 89 school districts have a bonding indebtedness of greater than 75 percent of that capacity; and
- an additional eight school districts are between 70 and 75 percent bonding capacity.

Consequently, if an IRB were proposed in any of those 32 school districts, even a small increase to student enrollment growth and capital costs would qualify as a significant impact under its proposed definition.

The Attorney General's Office (AGO) bill analysis notes that SB 131:

- although implied, does not explicitly state that the PLT is payable to the school district; and
- does not clarify whether such payment is to be made by the municipality/county or the company requesting the bonds.

Additionally, it is unclear for what purposes, either capital or operational, the school district may use funds from the PLT. The public school funding formula, also known as the State Equalization Guarantee (SEG), takes credit for 75 percent of revenue generated by the 0.5 mill levy. If the PLT may be used for operational purposes, this revenue would not be accounted for in the SEG, which may compromise the equity of the formula.

## **Technical Issues:**

Based on the issues raised by the AGO bill analysis, the sponsor may wish to consider an amendment that would:

- explicitly state that the PLT is payable to the school district; and
- clarify whether the PLT is to be made by the municipality/county or the company requesting the bonds.

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<sup>1</sup> Article IX, Section 11 of the state constitution limits the amount of a school district's indebtedness at 6.0 percent of the assessed valuation of the taxable property within the school district, which effectively limits the mills available for general obligation bond debt service.

Additionally, the sponsor may wish to consider an amendment clarifying the purposes for which the PLT may be used by a school district.

**Substantive Issues:**

SB 131 requires that notification from a county or municipality be given to school districts, among other parties, at least 30 days prior to the meeting at which final action will be taken on an IRB. Local school boards would have at least nine days, until 21 days prior to the meeting, to request a study of the impact to school district membership. It is unclear whether the nine-day period would give sufficient time for a local school board to hold a meeting to discuss the issue and make a decision regarding the potential impact of the IRB on the school district.

SB 131 would create the potential for a new revenue stream outside the existing comprehensive statewide tax structure for public school capital projects, which includes the annual revenues generated from Supplemental Severance Tax Bonds and committed by the Legislature to be used to support a statewide standards-based awards process. This process was put in place in response to the Zuni lawsuit, which claimed that districts with low property valuations were at a disadvantage in providing adequate facilities for their students.

In 2014, Gallup-McKinley County Schools, one of the original litigants in the Zuni lawsuit, requested that the lawsuit be reopened; this request was granted, and a hearing is currently scheduled in the spring of 2015. It is possible that these locally generated capital funds could jeopardize the framework, which originated from the Zuni lawsuit, because certain school districts would have larger capacity to generate capital funds, potentially resulting in substantial differences in the quality of facilities among districts.

**Committee Referrals:**

SEC/SFC

**Related Bills:**

SB 111 *Repeal County IRB Complaint Process*

\*SB 319a *County IRB Projects & Complaint Process*