LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: **SB 201** **52nd Legislature, 1st Session, 2015**

Tracking Number: **.198674.1**

Short Title: **School Bus Fuel Gross Receipts**

Sponsor(s): **Senator John M. Sapien**

Analyst: **Ian Kleats** **Date:** **February 10, 2015**

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

Bill Summary:

Effective July 1, 2016, SB 201 creates a new section of the *Gross Receipts and Compensating Tax Act* to exempt receipts from the sale of fuel used in the to-and-from school and school-related transportation of students from the gross receipts and compensating taxes.

Fiscal Impact:

SB 201 does not contain an appropriation.

Fiscal Issues:

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

- private school bus contractors spent approximately $8.7 million in fuel in FY 14;
- the current average wholesale cost of diesel fuel is approximately $3.20 per gallon;
- although fuel prices have decreased recently, the current price is still relatively high;
- fuel represents approximately 18 percent of a school bus contractor's expenses; and
- the department suggests that exempting contractors from paying gross receipts tax on fuel will give them some relief at the pump due to high cost of diesel fuel.

The PED bill analysis also implies that school bus contractors must use funds set aside for maintenance and operations to pay increased fuel costs during a fiscal year, which might result in deferred maintenance on active school buses. On that point, deferring maintenance may jeopardize the safety of transporting students to-and-from school.

According to data from the FY 16 transportation distribution budget request from PED, private school bus contractors spent approximately $8.7 million for fuel in FY 14. Assuming that this amount is inclusive of gross receipts tax with an average rate of 7.0 percent, it is estimated that private school bus contractors paid approximately $574,000 in gross receipts tax on fuel, of which it is assumed approximately $320,000 would be directed to the General Fund and the remainder would go to various local governments.

Based on this estimated revenue impact, the provisions of SB 201 could result in net cost savings to the General Fund of over $254,000 annually beginning in FY 17 by reducing the amount needed to fund school transportation fuel costs.

In FY 12 and FY 13, the Legislature appropriated $1.2 million and $1.5 million, respectively, as emergency supplemental distributions to accommodate fuel price increases. In the 2013 session, the Legislature extended through FY 14 the period of time the FY 13 appropriation may be expended. The provisions of SB 201 could stretch General Fund dollars appropriated for school transportation further and minimize any future emergency supplemental distributions.

Substantive Issues:

During the 2014 interim, the Legislative Education Study Committee (LESC) revisited the recommendations of the 2012 and 2013 interim LESC subcommittees on public school transportation, which included members of the Legislature; solicited input from interested stakeholders, such as school administrators and private school bus contractors; and considered issues related to school transportation including:

- transportation safety for early childhood students;
- cross-district transportation for students of choice;
- school bus replacement schedules;
- allocations through the school transportation funding formula; and
- options to deal with high fuel costs.

SB 201 was a result of both the 2012 and 2013 subcommittees' deliberations, and the bill was unanimously endorsed by the LESC on December 12, 2014.

Provisions in the *Special Fuels Supplier Tax Act* allow school bus contractors to benefit from:

- a deduction of gallons of special fuel sold when calculating special fuel excise tax due, which would most commonly occur for contractors buying diesel fuel wholesale; or
- a refund of special fuel excise tax paid, which would most commonly occur when fuel is purchased at retail.

The exemption for fuel from the gross receipts and compensating taxes includes the clause, "on which the tax imposed by Section 7-13-3, 7-16-3 or 7-16A-3 NMSA 1978 or the *Alternative Fuel Tax Act* has been paid and not refunded." This clause means that, if a school bus contractor uses the special fuel excise tax deduction or refund, the transaction would generate gross receipts or compensating tax liability. In essence, the contractor must choose between paying the lesser of gross receipts and compensating taxes or the special fuel excise tax.

Additionally, the special fuel excise tax deduction and tax refund are structured in a way that could be considered "upside down." Because a taxpayer using those two tax expenditures must pay gross receipts tax or compensating tax instead, the price relief provided by the deduction or refund is greatest when fuel prices are low; conversely, the price relief afforded is at its least or even nonexistent when the price of fuel is high. SB 201 would allow for the level of fuel price relief to remain constant for all price levels.

Finally, public school districts and state-chartered charter schools currently pay neither special fuel excise tax nor gross receipts tax on diesel fuel purchases. That private school bus contractors must pay those taxes could be viewed as a competitive disadvantage placed on the provision of school transportation services. SB 201 would provide the same tax treatment to private enterprise as public schools.

Tax Deductions vs. Tax Exemptions

The distinction between tax deductions and exemptions bears mention. Under most instances, a gross receipts tax deduction could be considered preferable to a gross receipts tax exemption from a tax policy perspective because the use of deductions can be tracked to a greater degree than exemptions. However, in the case of SB 201, this is not the case. The special fuel excise tax deduction and refund provide parallel reporting mechanisms through which the use of the gross receipts tax exemption can be tracked. In fact, if SB 201 were structured as a deduction instead, the Taxation and Revenue Department (TRD) would be required to maintain a redundant tracking mechanism, thus incurring an additional administrative cost, a fact which TRD notes in its bill analysis.

Technical Issues:

Although the LESC did indeed endorse SB 201, the bill does not reflect that endorsement.

Background:

Public school to-and-from transportation is funded through an allocation formula provided in the *Public School Finance Act*. This formula is a distribution model using site characteristics such as ridership, miles, and total school buses used. Whether a school district operates its own school bus transportation or contracts with a private firm to provide those services is not included as a variable in the allocation formula.

According to PED, transportation funding in FY 14 was roughly $3.8 million below FY 08 levels, even though the average price of diesel fuel in FY 08 was approximately $3.06 versus today's cost of $3.20. The PED analysis suggests that fewer dollars appropriated over the past few years and higher fuel prices have negatively affected the amount of funds school districts have to negotiate their school bus contracts.

Private school bus contractors negotiate their contracts annually with school districts. According to the Student Transportation Bureau at PED, which reviews them, these contracts include the following line items:

- salary and benefits;
- maintenance and operations; and
- fuel.

Committee Referrals:

SEC/SFC

Related Bills:

None as of February 10, 2015.