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FISCAL IMPACT REPORT

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ORIGINAL DATE 02/09/15

SPONSOR Stewart LAST UPDATED _____ HB _____

SHORT TITLE School District Liens of Some School Buses SB 129

ANALYST Gudgel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15 – FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate (See analysis)	Indeterminate (See analysis)	Recurring	District Operating Budgets & Transportation Emergency Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 129, endorsed by the Legislative Education Study Committee, amends the Public School Finance Act to require school districts to file a lien on every contractor-owned school bus that is under contract. Current statute requires liens to be filed on contractor-owned school buses that are under contract only if the contractor still owes money on the bus.

FISCAL IMPLICATIONS

Enactment of SB 129 would mitigate the state's vulnerability to collection of monies owed and result in cost savings, and protect school districts in the instance of a contractor declaring bankruptcy. This bill may also decreased distributions made from the Transportation Emergency Fund to purchase school buses when contracts are not renewed, terminated, or a contractor goes out of business.

PED's analysis notes school bus contractors receive funding from the state to pay for the cost of acquiring new schools buses. Without a lien in place at all times to protect the state's investment, a contractor could sell their school buses or use them as collateral for loans, precluding the state

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from accessing them in the event a contract is not renewed or is terminated. This would cause the state to have to purchase new equipment while trying to get their buses back at an average cost of \$85 thousand per school bus.

SIGNIFICANT ISSUES

Section 22-8-27 NMSA 1978 requires PED to establish a replacement cycle for contractor-owned school buses every 12 years and requires the PED to establish a schedule for the payment of rental fees for the use of contractor-owned buses. An annual general fund appropriation is made to PED to cover contractor-owned rental fees. Despite the expectation that contractor-owned buses will be used for 12 years, rental fees for the use of contractor-owned buses are generally paid to a contractor over a five-year period, consistent with the terms of current automobile financing. Because current law only allows a school district to file a lien on a contractor-owned school bus if the contractor owes money, contractors will generally obtain free and clear title to school buses that have been paid for by the state well before the 12-year replacement cycle expires.

Under state law, if a contract for the use of a school bus in which the state has made rental fee payments is terminated or not renewed prior to the expiration of the 12-year replacement cycle, the PED must calculate the remaining number of years the bus could be used based on the 12-year replacement cycle and calculate the amount of rental fee overpayments that have been made. The school district is then required to deduct the overpayment amount from any remaining amount due on the contract. If there is not a balance due on the contract the contractor is required to reimburse the school district for the overpayment.

Current Section 22-8-27(D) NMSA 1978 was enacted during the 2009 legislative session requiring school districts to file a lien on every contractor-owned school bus under contract on which money was owed on the vehicle. This section of statute was added at that time because it was proving difficult for school districts to collect any overpayment made for rental fees from contractors when a school bus contract was terminated or non-renewed. Further, in many cases school buses were not transferred to the school district or succeeding contractor, resulting in increased costs to replace necessary school buses (see Other Substantive Issues).

The bill would require school district to file a lien on every contractor-owned bus that is under contract, regardless of whether the contractor owes money on the bus. This change would protect the state's investment in contractor-owned school buses, making it easier to recover overpayments in the event a contract is not extended or renewed through the duration of the 12-year period. The lien prohibits a school-bus contractor from refinancing or using a school bus as collateral for any other loan, or transferring ownership of the bus.

OTHER SUBSTANTIVE ISSUES

PED's analysis in 2013 indicated the average price of a new school bus is approximately \$85 thousand. It also cites two instances which occurred prior to the enactment of the current statute that requires liens on contractor-owned school buses on which money is owed:

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

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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. The school bus was used to secure a bank loan and 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.

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