

LFC Requester:	Sunny Liu
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**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 2/27/2017
Original **Amendment** **Bill No:** SB454
Correction **Substitute**

Sponsor: Senator Mimi Stewart **Agency Code:** 924
Short Title: LOCAL OPTION PROPERTY TAX FOR SCHOOLS **Person Writing:** Aguilar/Craig/Burrell
Phone: 827-6519 **Email:** Paulj.aguilar@state.nm.us

SECTION II: FISCAL IMPACT

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
		\$7,078.1	Recurring	School District Operational Funds

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB454 provides for a local option property tax for school district operational purposes and creates the local operational school fund. It also modifies the definition of federal revenue under the Public School Finance Act.

FISCAL IMPLICATIONS

It is important to note that these provisions only apply to school districts. Charter schools do not have the ability to levy taxes and as such are not affected by the provisions of this bill. As such, the provisions of this bill are dis-equalizing under the provision of the Public School Funding Formula and may cause significant unintended consequences.

There are several fiscal implications. The amount of funds that could be generated by this local operational mill levy can fluctuate greatly since it allows a school district to ask the voters to approve up to 2 mills during an election with the total potential of having 4 total mills under the provisions of this act.

However, on page 8 of the bill, lines 12,13 and 14 state that if a proportion of less than 80% is calculated in accordance with 20 U.S.C. 7709(d)(1) (proportionality tests under Impact Aid) for any school district then the mill levy is not to be certified by DFA for imposition for any school district. **Since any tax levied under this act is outside the scope of the public school funding formula, this would only allow a maximum levy of 0.125 mills to meet the 80% test. Currently, 0.5 mills are authorized in statute to be levied for operational purposes and is taken into account in determining a school district's SEG.** The formula for the calculation would be reflected as follows: $(\text{Local taxes revenues covered under a state equalization program}) / (\text{Total local tax revenues}) = (0.5) / ((0.5) + (0.125)) = 80\%$.

Under this scenario, .125 mills would generate approximately \$7,078,146 statewide. $(0.125/1000)$ times statewide initial assessed valuation (\$56,625,171,340) = \$7,078,146.42, not a significant amount given the complexity of these changes.

The issue of determining whether the state would meet the disparity test in order to be certified by the USDOE as having a state equalization program would be at risk since additional revenue generated by this tax would be taken into account as well as the amount of Impact Aid that is to be used as an offset to a school district's SEG would fluctuate. Should the state not meet the disparity test, approximately \$55-\$60 million Impact aid basic payments would not be able to be used as offsets (credits) in determining a school district's SEG. Without additional SEG dollars from the general fund to offset this amount, the unit value would decrease accordingly.

This would also create issues in determining the initial and final unit values, since the Impact Aid credit amount would have another level of fluctuation and add another level of uncertainty.

The bill provides that the taxes will not be certified by DFA if it is determined that the state will fail to qualify for this certification. However, the data used for this test are the actual revenues from two years prior to the fiscal year that the state is applying for certification. Since this is the case, current year data will impact the certification two years from today. PED would not be able to stop a tax levy under SB 454 until it had failed to certify something for two years.

SIGNIFICANT ISSUES

SB 454 complicates revenues for state public education funding, with little added benefit. It also could disqualify funding, despite attempts in the bill to include language to prevent this occurrence.

It is unclear why the state needs to create a new mechanism for Operational funding based

upon local property tax revenue, when provisions in state law already provide for one.

SB 454 does not adhere to the Constitutional limit on property taxes that have been in place since 1933.

After passage of the *Public School Finance Act* in 1975, public schools received state funding through a formalized funding formula, but at that time, local school districts still levied as much as 8.975 mills from local property taxes for operations. With passage of the “Big Mac” tax package in 1981, the 8.975 mills allowed to be levied by school districts were transferred to counties and municipalities. The tax package indicated that school districts were then allowed to levy 0.5 mills on all property and oil and gas severances for operations, which has remained in place to this day.

There are nine sections to the bill. Each section is described in detail below.

Section 1 states that Sections 1 through 7 of the act are to be known as the Local Operational School Levy Act (LOSLA).

Section 2 provides definitions for the Local Operational School Levy.

Section 3 creates the procedures for authorization of local school boards to adopt a resolution to impose a tax for district operational purposes subject to voter approval. The total tax imposition under this act is not to exceed a total rate of 4.0 mills. However, only a maximum of 2.0 mills may be on the ballot during any one election. The funds generated under this tax millage are to be expended only for operational purposes of the school district.

Section 4 creates the procedures for the district to take the question of the tax imposition to the voters. It also states that any resolution authorizing a tax pursuant to the LOSLA is to be adopted by a date necessary to ensure that the results of the election on the question of imposing the tax must be certified no later than June 15 of the property tax year for which the tax rates will first be certified.

Section 5 provides the procedures for DFA to certify the imposition of a tax rate approved by the voters in each applicable school district. It also states that DFA is not to certify the imposition of the applicable tax rates if: (1) the PED notifies DFA that the imposition of the applicable tax rates would result in the state not be certified by the USDE as an equalized state for the purpose of being able to use Impact aid basic payments as credits or offsets to calculate a school district’s allocation under the public school funding formula, or (2) the proportion of local taxes for operational purposes used as offsets in determining a school district’s allocation under the funding formula is less than eighty per cent in any district.

Section 6 creates the local operational school fund and allows appropriations to be made to the fund.

Section 7 creates a state guarantee calculation and potential state distribution pursuant to the LOSLA. The state guarantee for a school district that has imposed a tax pursuant to the LOSLA is determined by multiplying 2.5% by the tax rate certified pursuant to the act and multiplying that product by the first reporting date program cost for the school year beginning in any year a tax rate under this act is certified for that school district.

The state distribution for a school district for a school year is an amount that is not to exceed the

state guarantee for that school district and is equal to the amount that the state guarantee exceeds the revenue from the tax imposed in that school district pursuant to the LOSLA received during the period beginning June 1 of the year during which a tax rate under that act is certified for the school district and ending May 31 of the next year. In the case that a school district receives revenue from the local tax that exceeds the guarantee during the period June 1 to May 31, the local school board must remit to the local operational school fund by June 30 of the school year an amount equal to the sum of the amounts derived from the following three calculations:

- (1) $\frac{1}{4}$ of the amount of revenue that exceeds 125% of the state guarantee but is less than 150% of the state guarantee;
- (2) $\frac{1}{2}$ of the amount or revenue that is 150% or more but less than 175% of the state guarantee;
- (3) $\frac{3}{4}$ of the amount of revenue that is 175% or more of the state guarantee.

If the balance in the local operational school fund in any fiscal year is insufficient to pay the sum of the distribution amounts determined to be due to all the school district entitled to a distribution, the amount necessary is to be transferred from the state-support reserve fund. If the amount in the state-support reserve fund is insufficient to fund the state equalization guarantee (SEG) and the amount needed for the state guarantee payment, the SEG is to have priority and paid first. The state guarantee payment under the LOSLA is to be reduced proportionately if the remaining funds are insufficient to cover the total cost of the state guarantee payment.

Section 8 modifies the definition of federal revenue in the public school finance act by adding the following language: “excludes amounts that, if taken into consideration in the computation of the state equalization guarantee distribution, will result, pursuant to federal law or regulations, in the reduction or elimination of federal school funding otherwise receivable by the school district.”

This provision appears to reduce the amount of impact aid considered under the funding formula so that local maintenance of effort requirements for federal grants can be met by a district.

Section 8 also modifies the provision that allows the state to take 75% credit for impact aid basic payments in determining a district’s SEG by adding the following language: “with respect to a school district that received PL874 payments and for which a proportion of less than 75% is calculated for the purpose of taking PL874 funds into consideration in determining the SEG, that lesser proportion of receipts to the school district derived from grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code.”

Section 9 authorizes the state support reserve fund to be used to augment appropriations made to the local operational school fund.

ADMINISTRATIVE IMPLICATIONS

The provisions of SB 454 places undue hardship on multiple state Executive branch agencies tasked with implementing its unnecessarily complicated provisions. DFA, TRD and PED would likely need to devote additional professional development, revamp and reformat revenue tracking and distribution worksheets, as well as improve and coordinate work across the three Executive branch agencies. Implementation will prove difficult with existing resources.

ALTERNATIVES

Alternatively, the sponsor could alter the provisions in law and the constitution regarding the amount of local property tax school districts already generate to increase the levy from a half mill.