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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/12
 LAST UPDATED 02/02/12 HB 53

SPONSOR Miera

SHORT TITLE Limit School Retentions Through Remediation SB _____

ANALYST Gudgel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 53 repeals Section 22-2C-6 NMSA 1978 – Remediation Programs; Promotion Policies; Restrictions – and enacts a new Section 22-2C-6 – Grade Promotions; Interventions; Remediation Programs; Retention Policies; Restrictions. The bill will allow for early identification of struggling students by requiring kindergarten through eighth grade students to be evaluated with a school-district-approved assessment to determine whether they are proficient in reading and math at the beginning of the school year. School districts will be required develop academic improvement plans for students who are not proficient in reading and math that delineates reading and math deficiencies and intervention and remediation programs to be used.

The bill requires a parent to be notified that their child has not achieved grade-level proficiency in reading or math no later than the end of the first grading period, and hold a parent/teacher conference to discuss strategies, including intervention and remediation programs available.

Students who do not achieve proficiency by the end of the school year may be retained in the same grade for no more than one year with an academic improvement plan or may be promoted to the next grade if a parent refuses to allow the child to be retained and signs a waiver. The child will be placed on an academic improvement plan during the second year, and if the child fails to achieve academic proficiency by the end of the second year shall be retained in the same grade for one year unless the child meets one of the five exemptions allowed by the bill.

Exemptions from the mandatory retention policy specified by the bill are as follows for a student who: (1) scores at least at the fiftieth percentile on a school-district-approved norm-referenced or assessment or at the proficient level on an alternative school-district-approved criterion-referenced assessment; (2) demonstrates mastery on a teacher-developed portfolio that is equal to a proficient score on the New Mexico Standards-Based Assessment; (3) shows sufficient academic growth by meeting acceptable levels of academic performance specified by the school district; (4) is an English language learners who can establish proficiency in a language other than English on a reading assessment or who has less than 2 years of instruction in English; or (5) is a special education student who shall be promoted or retained in accordance with the students individualized education program (IEP).

The bill requires public schools to establish baseline assessment data on reading and math grade-level proficiencies for students in K-8 using data from the 2011-2012 and 2012-2013 school years.

FISCAL IMPLICATIONS

PED indicated a total need of \$12 million to support early identification of struggling readers and provide interventions and remediation programs to struggling readers. The bill defines “reading proficiency” as a score on the statewide standards-based assessment that is higher than the lowest level established by the department. Based on the 2011 administration of the New Mexico Standards Based Assessment to 3rd graders, 21.9 percent, or 5,644 students scored at beginning steps - the lowest level. PED anticipates a total of 24,000 students in kindergarten through third grade will need additional reading support. The department estimates total district funding needed is \$9.1 million. Approximately \$120/student is needed for interventions with struggling students, for a total of \$2.8 million. The remaining \$6.3 million would be used to support reading coaches at the district level that will support schools with implementation of the formative assessment tool and interventions. PED proposes \$85 thousand per reading coach and estimates 1 reading coach will be needed for every 6 elementary schools.

Total department funding indicated is \$2.9 million. PED will approve and provide a short-cycle assessment tool for use with all kindergarten through third grade students. Current short-cycle assessments on the market range from \$1/student to upwards of \$50/student. PED anticipates spending approximately \$2 million annually to screen students in kindergarten through third grade. PED anticipates spending approximately \$800 thousand for district leadership with training on effective reading instruction and how to use short-cycle assessment data to support struggling readers. PED also indicates the department will need to hire 1 FTE to guide the work at PED and support districts as they implement the screening tool and align interventions. The FTE would be funded at approximately \$88 thousand annually.

School District Estimated Budget Impact

During the 2011 special session, Las Cruces Public Schools and Albuquerque Public Schools (APS) provided estimates of operating budget impact related to Senate Bill 23, which was very similar to provisions in this bill except for the mandate to provide summer school remediation.

APS estimated Senate Bill 23 of the 2011 Special Session could potentially cost the district \$15 million to provide interventions, including instructional materials, training and interventionists to 6,900 kindergarten through third grade students who are not proficient. APS indicated it was difficult to address estimates for “alternative programs” because the bill does not include a definition of an “alternative program”. APS assumed 12 thousand students in kindergarten through eighth grade may be required to be placed in an alternative program pursuant to the provisions of SB23. The APS assumption includes first graders through eighth graders, though second grade is the first year students would be required to be placed in an alternative program pursuant to the provisions of House Bill 69. APS estimated the cost of placing students in an alternative program could be up to \$24.7 million dollars. For the purposes of this bill, APS’s estimate for an alternative program appears to be high and appears to assume that an alternative program refers to an alternative educational setting.

Las Cruces Public Schools estimates were based on the same assumptions APS made. LCPS estimated it could cost the district approximately \$3.1 million to provide interventions, including instructional materials, training and interventionists to kindergarten through third grade students who are not proficient. LCPS estimated placement of 2,306 students in an alternative program could cost the district approximately \$5 million.

The above estimates are only for an early intervention and remediation policy directed to kindergarten through third grade students who are struggling with reading. The estimates provided by PED do not address grades five through eight reading or kindergarten through eighth grade math. Based on the 2011 New Mexico Standards Based Assessment Data, only 49.8 percent of students statewide scored proficient or above on reading, and only 41.8 percent on math. As PED stated, it is likely that an intervention and remediation policy targeted to kindergarten through eighth grade reading and math would cost substantially more to implement than a K-3 reading intervention policy.

It is reasonable to expect that school districts and charter schools will prioritize existing resources into strategies that are research-based and are proven to increase student achievement, including reading and math proficiency. However, it is unclear to what extent these funds can be reprioritized and how much of the funds can be reprioritized. PED has not provided an analysis of how these funds are currently being used and how and even if they can be reprioritized.

While districts are free to spend distributions from the state equalization distribution (SEG) as they choose, it is becoming critical that decisions become more strategic, focusing on highly effective programs with proven results. Districts need to become more flexible and willing to implement a coherent improvement strategy, targeting resources to achieve the maximum benefit to improve student achievement and reading proficiency. Given the current economic climate, now is the time to look closely at how districts and charters are spending current revenues, what programs are working and should be prioritized, and what programs have little success and should be terminated.

However, because school district budgets have been decreased over 8 percent over the last several years, it is likely further demands on school district and charter school operating budgets will be difficult for districts and charters to absorb. School districts also note that there are federal restrictions on reprioritizing federal funds that may limit school districts and charter schools from accessing those funds for expenditure to meet the funding needs of this bill.

Analysis earlier in FY12 also indicated that districts and charter schools receive large amounts of federal funds that can be reprioritized to address the funding needs of this bill – between \$149 million and \$230 million annually in Title I, Special Education (IDEA-B), Title II (to support professional development), Title III (to support English language learners), and School Improvement Grant funds. PED indicated districts and charter schools do not fully expend their allotment of federal dollars, particularly from Title I and IDEA-B, and that unexpended funds are carried forward to the next fiscal year and remain available for expenditure for approved purposes. The department indicates that costs to be borne by the districts are generally consistent with the approved uses for the early intervening services portion of IDEA-B and Title

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SIGNIFICANT ISSUES

The bill requires local school districts to approve intervention and remediation programs and academic improvement programs that have demonstrated effectiveness to provide instructional assistance to kindergarten through eighth grade students who do not demonstrate grade-level proficiency in reading and math. Intervention and remediation programs and promotion policies shall be aligned with school-district-approved, valid and reliable assessment results and with state standards. Students in kindergarten through eighth grade will be evaluated with school-district-approved assessments to determine grade level proficiency.

PED Analysis indicates:

- Utilizing a consistent, statewide screening assessment is important as New Mexico students are often mobile and ensuring consistency across districts will be necessary to support young readers. If the screening tool varies district to district, there is risk that intervention support could “start” and “stop” as a student moves across districts as the identification of students may vary significantly. HB53 allows for too much variability as each district will be able to choose and select a screening assessment without having to provide assurances to PED that the screening assessment is:
 - Aligned to the New Mexico content standards;
 - Comparable across multiple districts; and
 - Yields data that can be used to inform instruction.
- Parents shall be notified at the end of the K-8 years that the student will not be promoted to the next grade and a parental waiver will be allowed. This is the same as existing statute and is concerning as students will have had multiple opportunities to improve, and despite specific intervention, are still not on grade level. Further, there are reasonable exemptions in place for students who are not proficient but should be promoted. For example, a student who has an IEP will be promoted or retained in accordance with their IEP.
- Most students who are identified with a Specific Learning Disability are identified in grade 4. A report by the Fordham Foundation, *Shifting Trends in Special Education*, found (http://www.edexcellencemedia.net/publications/2011/20110525_ShiftingTrendsInSpecialEducation/ShiftingTrendsInSpecialEducation.pdf):
 - The number of students identified as having “specific learning disabilities (SLD),” the most common of all disability types, declined through the decade, falling from 2.86 million to 2.43 million students, or from 6.1% to 4.9 % of all students; and
 - The more sophisticated Response to Intervention (RTI) process being used by districts and schools to screen and intervene with struggling students had an impact on the decrease in the number of students identified with a SLD.
- This underscores the need to focus on early intervention in reading specifically for students in grades K-3. Overtime, it may be sensible to include a focus on both reading and math, but initially, the focus should be reading only.

Title I Issues

Specific to Title I, section 1112 (b) of ESEA states that a district must develop a plan and identify tools that can be used to:

- assist in diagnosis, teaching, and learning in the classroom in ways that best enable low-achieving children served under this part to meet the state student achievement academic standards and do well in the local curriculum; and
- identify effectively students who may be at risk for reading failure or who are having difficulty reading, through the use of screening, diagnostic, and classroom-based instructional reading assessments

However, districts are concerned that relying on the use of federal funds to support the bill will result in a violation of the “supplement not supplant” requirements of Title I. The “supplement, not supplant” requirement ensures that children participating in Title I programs receive their fair share of services from state and local funds. Title I requires LEAs to use federal funds received

under Title I only to *supplement* the amount of funds available from nonfederal sources for the education of students participating in Title I. LEAs *cannot use* these federal funds to supplant (take the place of) funds that *would, in the absence of Title I funds, have been spent* on Title I students.

- In a Title I targeted assistance school (generally, a school with less than 40% poverty), additional programmatic services must be provided to identified Title I students (i.e., those failing or those most at risk of failing to meet state academic standards).
- In a Title I schoolwide program school (a school with 40% or more poverty and an SEA-approved schoolwide plan), since all students are eligible, assuring that federal funds are supplemental to state and local funds is accomplished through fiscal analysis, such as determinations of “comparability”.

PRESUMPTION OF SUPPLANTING: There are three flags in “supplement, not supplant” where there is a presumption of supplanting, unless some other information is provided (see “Exclusions” below). **Supplanting has likely occurred if:**

- 1) Title I funds are used to provide services that are **required** to be made available **under other federal, state, or local laws;**
- 2) Title I funds are used to provide services that were **provided with nonfederal funds in the prior year; or**
- 3) Title I funds are used to provide services to Title I eligible students while those same services are **provided to non-Title I students with non-federal funds** (e.g., pay for full-day kindergarten with Title I funds in Title I schools while providing full-day kindergarten in non-Title I schools with other state and local funds).

Presumptions of supplanting are refutable if the local LEA can demonstrate that it would not have provided the services in question with non-federal funds had the Title I funding not been available (*i.e., what would have happened in the absence of the Title I funds?*).

PERFORMANCE IMPLICATIONS

The percent of third, fourth and eighth grade students, and charter school students, who achieve proficiency or above on the standards-based assessment on reading and math, percent of New Mexico high school graduates taking remedial courses in college, and the percent of students habitually truant could be affected by this bill.

ADMINISTRATIVE IMPLICATIONS

School districts will be responsible for selecting and providing a screening assessment and aligning interventions to those data with districts.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with House Bills 54 and 69, and Senate Bill 96. Senate Bill 50 is a duplicate.

TECHNICAL ISSUES

Page 6, Paragraph D requires a parent to be notified that their child has not achieved grade-level proficiency in reading or math by the end of the first grading period. The bill does not specify whether the district has the responsibility to notify the parent, or the child’s school.

OTHER SUBSTANTIVE ISSUES

Traditionally, students learn to read in kindergarten through third grade so they can read to learn in the upper grades. Early reading proficiency is a leading indicator of future academic success. A child who cannot read by the fourth grade will continue to fall behind their peers, and without intervention and remediation, academic proficiency will continue to decline as reading improvement changes most dramatically in the early years. Long term effects include failing classes, dropping out, and the inability to compete in higher education and the workforce. Results of a longitudinal study of nearly 4,000 students found that students who don't read proficiently by third grade are four times more likely to leave school without a diploma than proficient readers. For the worst readers, those couldn't master even the basic skills by third grade, the rate is nearly six times greater. *Double Jeopardy How Third-Grade Reading Skills and Poverty Influence High School Graduation*: The Annie E. Casey Foundation. Ensuring students can read is critical to improving student achievement and closing the achievement gap.

Current law requires school board to approve district-developed remediation and academic improvement programs to provide special instructional assistance to students in first through eighth grade who do not demonstrate academic proficiency. Despite this statutory requirement, a large percentage of students fail to achieve proficiency on the New Mexico Standards Based Assessment (NMSBA). Based on FY11 assessment data, 50.2 percent of students score below proficiency in reading, 58.2 percent of students score below proficiency in math, and 58 percent of student score below proficiency in science. Research indicates, and common sense confirms, that passing students on to the next grade when they are under-or unprepared neither increases student achievement nor properly prepares students for college and future employment.

At the same time, research also shows that holding students back to repeat a grade may have negative effects. In some instances, retained students have been shown to have behavioral problems, to show lower levels of academic achievement, to be less likely to receive a high school diploma and to be more likely to drop out of high school. A 2006 National Center for Education Statistics grade retention study found, between 1995 and 2004, high school dropouts were more likely than high school completers to have been retained in a grade at some point in their school career. It is also important to note that minority students are more likely to be retained. Retention and promotion decisions, if not accompanied by effective interventions, fail to provide long-term benefits for low-performing students.

Florida

Florida passed a similar law in 2002 that prohibited the promotion of third graders who did not score at a Level One, the lowest of five levels on the reading portion of the Florida Comprehensive Assessment Test (Florida's equivalent to the NMSBA). The Florida plan allowed five "good cause exemptions" in which third graders who were not reading above Level One could be promoted to the next grade. Florida has approximately 2.59 million total students.

Based on school year 2002-2003 data, the first year of implementation in Florida, 14 percent of Florida's third grade students were not promoted to fourth grade.

Florida appropriated \$107 million in FY07, \$134.7 million in FY08, \$123 million in FY09, \$106.5 million in FY10, and \$104.6 million in FY11 for the Just Read, Florida program and formula funds to school districts for comprehensive reading programs.

The Just Read, Florida program required the following:

- Establish statewide standards for P-12 school reading programs based on latest scientific research;
- Operate Reading Academies to train teachers and reading coaches in scientifically based reading instruction;
- Develop and monitor reading competencies that must be demonstrated for teacher licensure, reading endorsement and reading certification, including:
 - Elementary licensure (five competencies encompassing 61 indicators must be documented);
 - Secondary licensure (two competencies encompassing 26 indicators);
 - Reading endorsement for reading interventionists (six competencies encompassing 74 indicators): and
 - Reading certification (30 graduate semester hours or a master degree or higher in reading and a passing score on the state K-12 Reading Subject Area test);
- Approve postsecondary teacher preparation programs based on proof that programs cover the required reading competencies;
- Develop screening, diagnostic and progress-monitoring assessments for instruction in reading;
- Support Florida Family Literacy Initiative; and
- Promote public-private partnerships, family involvement programs and volunteer initiatives to help children and adults to learn to read.

Legislation was passed in Florida in 2005 requiring districts to provide retained students with intensive interventions in reading to address the specific reading deficiency identified by a valid and reliable diagnostic assessment, including:

- A minimum of 90 minutes daily of intensive, uninterrupted scientifically based reading instruction;
- A summer reading camp;
- Appropriate teaching methodologies;
- A high performing teacher as determined by student performance data and above satisfactory performance appraisals; and
- Either supplemental tutoring; a Read at Home plan; or a mentor or tutor with specialized reading training.

While efforts to increase proficiency between FY03 and FY10 have successfully decreased the percentage of third graders scoring at Level One by 7 percent, 16 percent of Florida third graders were still scoring at the lowest proficiency level in FY10.

Texas

From 1999 to 2002, Texas implemented a reading initiative that cost approximately \$75 million to train approximately 79,000 teachers in Grades K-3. Texas implemented a mandatory 4 day summer Teacher Reading Academy based on common curriculum. The training was research-based and very prescriptive, included video clips illustrating teachers working with students, and focused on individualized instruction based on each student's needs. Eventually, the state

trained all K-8 teachers at an average cost of \$950 per teacher. The Texas initiative had several components, including:

- Developing a statewide consensus framework for reading instruction based on reading research;
- Creating assessments for student diagnosis and placement;
- Developing training curricula for all teachers who teach reading or language arts;
- Providing 4-day summer Teacher Reading Academies, face-to-face or on-line;
- Developing a reading curriculum scope and sequence (C-Scope), with suggested materials and exemplary lessons for use statewide;
- Providing ongoing teacher support and technical assistance;
- Evaluating all students on standardized instruments and providing mandated interventions for struggling students; and
- Enacting a bar on social promotion at grades 3, 5 and 8.

After teachers had been trained through third grade, the first group of third graders were subject to retention if they scored at the basic level on the third grade Texas standards-based assessment in reading. Students who test at basic or nearing proficiency are required to receive intensive interventions.

New York

School officials in New York have added \$2000 per student for remediation efforts, in a district whose average general education spending per pupil is about \$13,000 – and have seen positive gains.

ALTERNATIVES

- Focus on early literacy intervention in kindergarten through third grade.

RG/svb:amm