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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/12
LAST UPDATED 02/13/12 **HB** _____

SPONSOR Smith

SHORT TITLE Limit School Retentions Through Interventions **SB** 96/aSEC/aSFC

ANALYST Gudgel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	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 SFC Amendment

The Senate Finance Committee amendment to Senate Bill 96 struck the Senate Education Committee Amendment and changes reference to Section G on page 9, line 16 to correctly reference Section E.

Synopsis of SEC Amendment

The Senate Education Committee amendment to Senate Bill 96 allows a parent to waive a student's participation in prescribed intervention, and includes a new Section F. The new Section allows a parent to petition the school principal to promote a kindergarten through third grade student who is not proficient to the next grade if the students attendance rate is 95 percent, and the student has participated in all the required levels of remediation prescribed by the school district in the reading improvement plan and the parent signs a contract that outlines a reading intervention plan for the next grade.

Synopsis of Original Bill

Senate Bill 96 repeals Section 22-2C-6 NMSA 1978 – Remediation Programs; Promotion Policies; Restrictions – and enacts a new Section 22-2C-6 – Grade Promotions Intervention;

remediation Programs; Retention Policies; Restrictions. The bill requires assessment of all kindergarten through third grade students for reading proficiency and intervention and remediation with students who are not proficient in reading, and establishes a mandatory retention policy for third grade students who are not proficient in reading. No student shall be retained for more than one year in kindergarten through third grade because the student is not proficient in reading. Kindergarten through third grade students who do not demonstrate reading proficiency for two consecutive years shall be placed in an alternative program designed by the school district. The bill establishes six exemptions from the mandatory retention policy. The bill also requires districts provide intervention and remediation to students in grades four through eight who are not academically proficient for two years before the student is placed in an alternative program.

FISCAL IMPLICATIONS

House Bill 2 includes \$8.5 million for an early reading initiative that includes \$2 million for professional development to support training on effecting reading instruction and data driven decision making and to support reading and instructional coaches at the district level to support schools with the implementation of formative assessment tools and interventions. The remaining funding may be used by the department to support assessments, and interventions for struggling readers, and reading and instructional coaches. House Bill 2 also includes \$3.5 million for intervention in D and F schools contingent on the use of the funds to support reading coaches and instructional coaches.

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.

House Bill 2 also includes \$10 million for prekindergarten and \$11 million for the kindergarten-three-plus (K-3 Plus) program. These programs are targeted to at-risk students and both have been shown to improve student outcomes. These programs are existing programs that fund

primarily direct services, and minimize overhead and non-instructional costs. Both programs have the capacity to improve student reading proficiencies for participating students. For example, preliminary data from the first of a five year study on the effectiveness of the K-3 Plus indicates third grade students who participate in K-3 Plus for at least one year prior to the third grade gained 7.5 points in reading, 43.8 points in writing, and 12.4 points in math compared to third grade students who did not participate in K-3 Plus immediately prior to third grade. Participation in K-3 Plus is likely to save the state money by avoiding the need for more costly remediation programs and retention in the third grade.

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 I.

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. Las Cruces estimate for the alternative program also appears to be high and appears to assume that an alternative program refers to an alternative educational setting.

Section 22-2C-6 (H) NMSA 1978 currently requires a student who does not demonstrate academic proficiency for two successive school years to be placed in an alternative program designed by the school district. Because statute currently requires placement in an alternative program, estimates by Las Cruces and APS may be high.

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.

SIGNIFICANT ISSUES

Current law requires school districts and charter schools to provide remediation programs to students who are not academically proficient. Current law also includes a retention policy, with waiver provision, for first through seventh grade students who are not academically proficient.

The bill proposes the following processes for identifying struggling students and intervention and remediation:

For Kindergarten Through Third Grade Students:

The bill requires administration of a screening assessment that measures the acquisition of reading skills that is approved and provided by the Public Education Department (PED) to students in kindergarten, first, second and third grades. The student assistance team will be required to immediately develop a reading improvement plan for students that are not proficient, including delineation of interventions and remediation programs that will be included and strategies for a parent to use in helping the child achieve reading proficiency. The bill defines “reading proficiency” as a score on the New Mexico Standards-Based Assessment that is higher than the lowest level established by PED. The bill requires parents be given notice at the end of the first grading period that their child is not proficient in reading. Parents will be allowed to refuse to allow their student to participate in any prescribed intervention after winning a waiver that clearly indicates the parent’s refusal. At the end of third grade, if a student is not proficient in reading after completion of intervention and remediation program, and upon recommendation of the teacher and school principal, the child shall be retained in the same grade with a different reading improvement plan. The bill allows a parent to petition the principal to promote the student if the student has a 95 percent attendance rate, has participated in all required remediation, and signs a contract that outlines a reading intervention plan for the next grade. A student may only be retained for a total of one year between kindergarten and third grade as a result of not achieving proficiency in reading. Students who do not demonstrate reading proficiency for two successive school years shall be placed in an alternative program designed by the school district.

A student will be exempt from the mandatory retention policy if the student:

- Scores at least at the fiftieth percentile on a department-approved, norm-referenced assessment or at the proficient level on an alternative school-district-approved, criterion-referenced assessment;
- Demonstrates mastery on a teacher-developed portfolio that is equal to at least a proficient performance on the statewide standards-based assessments;
- shows sufficient academic growth by meeting acceptable levels of academic performance specified by the department;
- is an English language learner who is proficient in another language other than English on a valid and reliable reading assessment or who has had less than two years of instruction in English for speakers of other languages;
- is a student with a disability who shall be assessed, promoted or retained in accordance with the provisions of the student’s individualized education program; or
- is a student who has already been retained once in kindergarten, or first or second grade.

The bill requires each public school to establish baseline assessment data on reading proficiency for students in kindergarten through third grade using data from the 2012-2013 school year. The baseline assessment data shall include levels of performance in reading below which a student must be provided with an intervention and remediation program. To assess each student’s growth in reading and other academic subjects, in kindergarten through second grade districts shall use the screening assessment, and in grades three through eight districts shall use the statewide standards-based assessment.

For Fourth Grade Through Eighth Grade Students:

For students in fourth grade through eighth grade, intervention and remediation programs, reading improvement programs and promotion policies shall be aligned with school-district approved assessments. The bill requires parental notification in writing no later than the end of the second grading period that the student is not academically proficient. After a parent conference with the student assessment team, a written intervention plan shall be developed and implemented immediately. Fourth through eighth grade students who are not academically proficient at the end of the year, after participation in the required level of remediation, shall be provided a second year of remediation using a different program, and provided with an alternative program upon the third year the student is not academically proficient.

Effective with the 2013-2014 school year, local school districts will be responsible for approving and bearing the cost of intervention and remediation programs and reading improvement programs that have demonstrated effectiveness and are aligned with the screening assessment results and state standards to provide special instructional assistance to students in kindergarten through third grade who do not demonstrate reading proficiency.

PED indicates the use of a universal assessment tool for all New Mexico kindergarten through third grade students will ensure consistency across districts.

The bill maintains that parents are required to pay the costs of summer school and extended day intervention and remediation programs offered in grades nine through twelve, unless the parents are determined to be indigent.

The “educational plan for student success”, a student-centered tool developed to define the role of the academic improvement plan, is limited to be a tool developed to define the role of the reading improvement plan.

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 Senate Bill 23 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 3rd, 4th, and 8th grade students who score proficient or above on the standards based assessment, the percent of students who graduate, and the number of students needing remediation in college could be affected by this bill.

ADMINISTRATIVE IMPLICATIONS

School districts will be required to include percentages of academically proficient fourth through eighth grade students listed by public school and charter school in the district's annual accountability report required in Section 2-2C-11 NMSA 1978.

Additional administrative duties for the department include procuring a universal screening assessment tool for use in kindergarten through third grade and provision of statewide training on the use of the assessment tool.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 69 is a duplicate. Senate Bill 50 and House Bill 54 conflict with Senate Bill 96.

TECHNICAL ISSUES

The exemptions outlined in the bill as drafted apply to fourth through eighth grade students rather than kindergarten through third grade students. Page 9, line 16 should reference Subsection E, not Subsection G.

The department's analysis indicates the retention policy won't go into effect until the 2013-2014 school year; however, it is not clear that the retention policy won't be in effect during the 2012-2013 school year.

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.