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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/12/13  
**LAST UPDATED** 02/18/13     **HB** \_\_\_\_\_

**SPONSOR** Kernan

**SHORT TITLE** Academic Success Through Remediation Act     **SB** 260/aSPAC

**ANALYST** Gudgel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate See Fiscal Implications	Indeterminate See Fiscal Implications			

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicate to HB 257

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amended the bill in the following:

- Includes a definition for “deficient in reading”, and substitutes “deficient in reading” where the bill reads “not proficient in reading” to trigger development of a reading improvement plan and intensive targeted instruction.
- Allows intensive targeted instruction to be provided 20 minutes a day five days a week or the weekly equivalent.

- Requires the student assistance team to be a collaborative group.
- Allows only the parent to choose a student advocate.
- Requires a screening assessment to be administered to kindergarten students at the end of the first nine weeks of school.
- Eliminates the immediate development of a reading improvement plan by the student assistance team.
- Allows the principal, after consulting with the teacher, to decide whether to retain a third grader who is not proficient in reading.
- Changes “individual educational plan” to “individualized educational plan” to conform to current statutory terminology.
- Eliminates reference to Subsection I in Subsection O.

### Synopsis of Original Bill

Senate Bill 260 repeals Section 22-2C-6 NMSA 1978 of the Public School Code - Remediation programs; promotion policies; restrictions – and enacts the Academic Success Through Remediation Act (Act), a new section of the Public School Code. The new Act changes statutory requirements pertaining to retention of students up to eighth grade, including kindergarten students.

Many provisions of the Act are similar to the repealed section. Key differences include:

- A definitions section defining, including a definition of “academic proficiency” and “proficient in reading”;
- Elimination of remediation and retention for first through third grade students who are not academically proficient – with regard to these students, remediation and retention is only considered for students who are not proficient in reading;
- Establishes data from the 2013-2014 school year to serve as baseline assessment data on reading proficiency for students in kindergarten through third grades, including levels of performance in reading on the screening assessment to determine when a student must be provided with intervention and remediation;
- Administration of a screening assessment to kindergarten through third grade students for reading skills;
- Notice must be given to the parent of a kindergarten through third grade student who is not proficient in reading by the end of the first grading period, and intensive targeted instruction will be provided to the child. Parents of kindergarten through third grade students will be able refuse, in writing, to allow their child to participate in any prescribed intervention;
- Beginning with the 2013-2014 school year, a student who is not proficient in reading at the end of kindergarten, first or second grade may be retained pursuant to an established reading improvement plan;
- Retention of a third grade student who is not proficient in reading and unable to achieve proficiency by the beginning of the next school year after participating in the required remediation only with the recommendation of the child’s teacher and school principal. A parent is able to petition for promotion if the student’s attendance rate was 95 percent, the student participated in all required remediation, and the parent agrees to a reading intervention plan in fourth grade. A student may only be retained in third grade once;
  - The Act establishes 5 exemptions from the third grade retention policy; and

- The Act eliminates statutory language that allows the retention of fourth through seventh grade students who are not academically proficient, and mandatory retention of eighth grade student who are not academically proficient.

## FISCAL IMPLICATIONS

Ending social promotion is one of the Governor’s priorities. The Public Education Department (PED) has not provided any estimate of potential costs, or savings, including the number of children that could potentially be affected by the changes in this bill or estimates of fiscal impact to school districts to implement effective interventions and remediation. The PED’s analysis includes information pertaining to their request for \$13.5 million for the New Mexico Reads to Lead early reading initiative. For FY13, the Legislature appropriated \$8.5 million to the Department for the early reading initiative. However, these funds were not distributed statewide. A number of school districts and charter schools received funding for early literacy intervention, though the funds do not appear to be targeted to the state’s lowest performing students nor the state’s most at-risk students.

If the Legislature continues the Reads to Lead funding, it will continue to provide the formative assessment tool for use with all kindergarten through third grade students at a cost of \$12 per student for approximately 106,000 students. Additionally, a portion of the funds will be used to support professional development for school administrators, teachers, reading coaches, and parents on the following:

- Evidence-based reading instruction and intervention aligned with Common Core State Standards;
- Using formative assessment data to drive instruction; and
- Strategies for parents to support students’ reading acquisition at home.

The bill defines “reading proficiency” as a score on the statewide standards-based assessments that is higher than the lowest level defined by the PED. In New Mexico, during the 2011-2012 school year there were approximately 25,252 third graders. Only 25,176, or 99.7 percent of those third graders were tested using the NMSBA in reading. Of those students, approximately 5,589, or 22 percent are reading at “beginning steps” and at risk of being held back. Per student funding received by districts is approximately \$7,044 per student. For every child that is held back, without additional legislative appropriations to cover the student, the school district will have to absorb the costs of an additional year of school.

Exemptions provided in the bill include students who score at least at the 50<sup>th</sup> percentile on a PED approved assessment; demonstrate mastery on a teacher-developed portfolio that is equal to at least proficient on the SBA; shows sufficient academic growth; is an English language learner who can score proficient on an assessment in their native language or who has been taught in English for less than two years; is a student with a disability; or has already been retained once. These exemptions would likely reduce the number of students that would be able to be retained annually. Assuming all special education students and English language learners meet the exemption would eliminate 3,557 of the 5,589 students scoring at beginning steps from the retention policy, leaving only 8 percent of third grade students subject to the retention policy. It is likely that some percentage of the remaining students will be able to meet the other four exemptions. Additionally, coupled with the requirement that both a teacher and principal have to recommend retention, it is unlikely that this bill will result in a high rate of retention of the state’s most struggling students.

During previous legislative sessions, the PED has indicated that the cost of implementing this bill will be absorbed by school districts and charter schools. Department testimony indicated districts receive \$225 million in federal funds that can be reprioritized for reading initiatives to support this bill, \$20 million in federal Title II funds for professional development, and that the state equalization guarantee (SEG) distribution includes \$10.5 million for professional development. It is reasonable to expect that districts should prioritize existing resources into strategies that are scientifically based and have proven success to increase reading achievement.

While districts are free to spend distributions from the 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.

In addition to the cost of educating a student for an additional year, school district and charter schools can be expected to have increased costs associated with remediation programs, including summer and after school remediation programs, professional development for underperforming teachers, assessments, curriculum, student assistance teams, and additional third grade classrooms and teachers needed. While existing funds may be able to be reprioritized, there will be actual increased costs to districts to implement and pay for the costs of remediation programs in kindergarten – districts are not statutorily required to do this currently. These costs are not easily estimated, as data on kindergarten student proficiency is not readily available.

There are a number of programs and interventions that could be used to address reading proficiency and reading interventions, including:

- Kindergarten-Three Plus (K-3 Plus) has shown success in increasing reading skills of non-proficient students;
- Programs to increase parental involvement;
- Elementary Breakfast;
- Prekindergarten;
- Extended learning opportunities, including after school reading programs and the 21<sup>st</sup> Century After School Programs;
- Principal and School Leadership programs; and
- The use of Title 1 funds for district wide reading programs, including programs that extend the school year like K-3 Plus.

The state may want to be more prescriptive in requiring research based remediation measures such as extended learning opportunities, and increased time-on-task, like K-3 Plus. To establish a range of costs of addressing remedial requirements, the LFC analysis looks at the K-3 Plus program, which has several years history in New Mexico and preliminary evidence of success. Further, the K-3 Plus program may be a relatively inexpensive remediation program because it builds on existing infrastructure.

The average annual cost of the K-3 plus program is approximately \$1,100 per student. It would cost approximately \$25.9 million dollars to provide K-3 Plus to the bottom 20 percent of students in kindergarten through third grade, little more than \$5.8 million per grade. Additionally, the Legislature may want to consider implementing a mandatory statewide K-3 Plus program in all high poverty schools. This would cost an additional \$25 to \$30 million annually. However, the expectation would be to see fewer students held back in the third grade because they are not proficient in reading. This would decrease the funding required to educate these students for an additional year.

It is expected that an effective third grade retention policy would have the effect of increasing early student success, resulting in positive fiscal effects in the future. Costs associated with increased professional development, targeted remediation and interventions, and retention could be offset by this increased student achievement. It would be expected that some of the costs associated with retention would be offset by reduced identification of special education students, increased graduation rates, and increased career and college readiness, including decreased postsecondary remediation rates.. Other costs, such as costs associated with juvenile and adult criminal activity would also be expected to decrease. While these are cost savings that will not immediately be realized, they are important to consider.

## **SIGNIFICANT ISSUES**

The purpose of the Act is to ensure that students who experience difficulties learning to read are provided multiple opportunities for early intervention and remediation from kindergarten through third grade and beyond. The Act includes a definition of “academic proficiency” and “proficient in reading” that appears to decrease the level of proficiency a student must show to trigger remediation under current statute. The Act will only trigger reading improvement plans for students who score at “beginning steps” on the standards-based assessment – the lowest level of proficiency. Current law defines “academic proficiency” as mastery of the subject-matter knowledge and skills specified in state academic content and performance standards for a student's grade level, and appears to apply to students who score at “beginning steps” and “nearing proficiency”.

### Kindergarten Through Third Grade Students

Beginning with the 2014-2015 school year, school districts and charter schools will be required to approve and bear the costs of intervention and remediation programs and reading improvement programs that have demonstrated effectiveness to provide special instructional assistance to students in kindergarten through third grade who do not demonstrate reading proficiency. The bill requires students in kindergarten through third grade to be assessed at the beginning of the school year for reading skills. If the results indicate a student is not proficient in reading (receives the lowest level of proficiency rating on the assessment), the student assistance team shall immediately develop a reading improvement plan for the student. Parents are able to refuse to allow their child to participate in any prescribed intervention.

Beginning with the 2013-2014 school year, the bill requires the parent of a student who is in kindergarten, first, second, or third grade to be notified by the first grading period that the student will be provided with intensive targeted instruction (extra instruction 20 minutes a day five days a week), and a student who is not proficient in reading at the end of kindergarten, first or second grade may be retained pursuant to an established reading improvement plan.

Beginning with the 2014-2015 school year, a third grade student who reads at a level higher than the lowest level of proficiency shall be promoted to fourth grade. A third grade student who reads at the lowest level of proficiency will be given an opportunity to participate in remediation before the beginning of the next school year and show proficiency to be promoted to fourth grade. If a third grader is unable to read at a level higher than the lowest level of proficiency after prescribed remediation, upon the recommendation of the teacher and school principal the student will be retained in third grade and provided a reading improvement plan that is different than the prior year's reading improvement plan. The bill allows a parent to petition to promote their student on to fourth grade if the student's attendance rate is at least 95 percent and the student participated in all required remediation. The parent will be required to sign a contract that outlines the reading intervention program for the next grade. The bill prohibits retention in third grade for more than one year.

#### Fourth Through Eighth Grade Students

The bill substantially maintains current remediation and retention policies for students in fourth through eighth grades, though it eliminates mandatory retention at grade 8. It also eliminates the possibility of remediation at other grades that is currently included in statute.

#### **PERFORMANCE IMPLICATIONS**

The number of third, fourth, and eighth graders scoring proficient or above on the NMSBA, the percentage of students who graduate, and the number needing remediation in college could be affected.

#### **ADMINISTRATIVE IMPLICATIONS**

The bill will increase both the PED duties, district and school duties. The PED will need to ensure department rules conform to the changes proposed in this bill, and will be required to approve norm-referenced assessments and criterion-referenced assessments that may be used in place of the NMSBA.

While school districts are already required to identify and provide remediation to first through eighth grade students who are not proficient, districts and charter schools will be required to develop remediation for kindergarten students.

#### **TECHNICAL ISSUES**

Page 6, Paragraph D , and page 8 Paragraph I requires notice to be given to a parent of a student who is not proficient by the first and second grading periods respectively; however, the section does not indicate who is responsible for notifying a parent – the teacher, the school, or the district.

Page 3, line 10, “proficiency in reading” is defined as a score on the statewide standards-based assessment, however administration of this assessment begins in third grade. The definition may need to be amended to include the screening assessment to conform to language in the bill.

Page 10, line 23, Section O exempts certain students from the provisions of I; however Section I does not include retention language. The reference to Section I should be removed.

Additionally, the bill uses the term “individual educational plan”, page 10, line 21 and 22, and “individualized education program” page 11, line 16. The bill should be consistent and use the term “individualized education program”.

## **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 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. Ensuring students can read is critical to improving student achievement and closing the achievement gap.

Current law requires school boards 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. Research indicates, and common sense confirms, that passing students on to the next grade when they are 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 without changing instructional strategies may be ineffective. Retention and social promotion, if not accompanied by effective programmatic intervention, fail to provide long-term benefits for low-performing students.

Districts must have academic improvement programs that are effective and provide targeted remediation. While a retention policy is intended to increase student achievement and ultimately lead to better outcomes, reports indicate some negative effects of retention if not coupled with effective interventions. In some instances where targeted remediation programs were lacking, 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.

### **Florida**

Florida implemented a mandatory retention 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 (the Florida standards-based assessment). The Florida plan allowed five “good cause exemptions” in which third graders who were not reading at 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 third grade students were not promoted to fourth grade.

Florida appropriated \$107 million in FY07, \$134.7 million in FY08, \$123.3 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.

### **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 3<sup>rd</sup> grade, the first group of 3<sup>rd</sup> graders was subject to retention if they scored at the basic level on the 3<sup>rd</sup> 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**

Implement effective strategies to improve literacy scores, including better preparation of elementary teachers. The PED outlines numerous strategies to improve literacy scores and help students achieve proficiency or above on standard-based assessments in reading, including remediation programs and providing struggling students with high performing teachers.

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