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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/14
SPONSOR Kernan **LAST UPDATED** _____ **HB** _____

SHORT TITLE Academic Success Through Remediation Act **SB** 45

ANALYST Gudgel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
	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
Total		Indeterminate See Fiscal Implications	Indeterminate See Fiscal Implications			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates Appropriation in the General Appropriation Act
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 45 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Many provisions of the Act are similar to the repealed section.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”, “deficient in reading”, “intensive targeted remediation”, 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 deficient in reading;
- Establishes data from the 2014-2015 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 to refuse, in writing, to allow their child to participate in any prescribed intervention;
- Beginning with the 2014-2015 school year, a student who is deficient in reading at the end of kindergarten, first or second grade may be retained pursuant to an established reading improvement plan;
- Third grade students who are deficient in reading and unable to achieve the required level of reading by the beginning of the next school year after participating in the required remediation will be retained with the recommendation of the school principal in consultation with the teacher beginning with the 2015-2016 school year.
- A parent is able to petition for promotion if the student is not habitually truant, 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.

PED analysis notes the following:

As part of the executive budget request, \$15.5 million was requested to support early identification of struggling readers and intervention for them. The department indicates the request aligns to this bill. The executive requested \$4 million to provide a formative assessment to 106,000 students in kindergarten through third grade at a cost of \$12 per student. The executive proposed using the remaining balance of the \$4 million to:

- Provide interventions aligned to assessment data to support struggling readers; and
- Support district and school administrators, teachers, reading coaches, and parents with

professional development 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 executive also requested \$11.5 million for FY15 to allocate to school districts, charter schools, and regional education cooperatives to provide reading coaches, professional development and reading intervention materials. The executive request included moving \$4 million from formula funding included in FY14, resulting in a total of \$15.5 million for early reading intervention for FY15.

The LFC recommendation included \$5 million in formula funding in addition to the \$4 million included in FY14 for reading intervention. In addition, the LFC recommendation included \$13.5 million to support the department's request, totaling \$22.5 million in funding to support the state's most struggling readers.

The changes proposed in the bill may significantly affect school district and charter school operating budgets as discussed in Significant Issues below.

PED has not targeted funding for early intervention to the state's lowest performing students nor the state's most at-risk students in FY13 and FY14. For FY14, PED distributed funds to all school districts and charter schools that submitted an early literacy plan (except Las Cruces and Albuquerque Public Schools who received more in formula funding than the agreed upon allocation of below-the-line funding). Results from the first year of the initiative (FY13) show modest gains in reading proficiency above the statewide average. Students at school districts and charter schools that received the below-the-line funding in FY13 gained an average of only 3 percentage points on the New Mexico Standards Based Assessment while the statewide average third grade reading proficiency increased 2.8 percentage points.

SIGNIFICANT ISSUES

Exemptions from the mandatory retention policy provided in the bill include third grade students who score at least at the 50th 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. Eliminating English language learners and special education student, LFC estimates approximately 8 percent of third grade students may be subject to the retention policy. This could be further reduced if students are able to meet the other four exemptions.

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 reading deficient students;
- Programs to increase parental involvement;
- Elementary Breakfast;
- Prekindergarten, also proven to improve student achievement;
- Extended learning opportunities, including after school reading programs and the 21st 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 little more than \$1,100 per student, and will increase as the unit value increases. 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. The state currently spends \$16 million on K-3 Plus, and LFC has recommended an increase of \$10 million for FY15. The Legislature may want to consider implementing a mandatory statewide K-3 Plus program in all high poverty schools. This would cost an additional \$50 to \$60 million annually based on current eligibility. The expectation would be to see fewer students held back in the third grade because they are deficient in reading. This would decrease the additional 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.

Kindergarten Through Third Grade Students

Beginning with the 2015-2016 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 deficient in reading, the student assistance team shall 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 2014-2015 school year, the bill requires the parent of a student who is in kindergarten, first, second, or third grade student who is deficient in reading 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 deficient in reading at the end of kindergarten, first or second grade may be retained pursuant to an established reading improvement plan.

Beginning with the 2015-2016 school year, a third grade student who is deficient in reading 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 still deficient in reading after prescribed remediation, upon the recommendation of the principal in consultation with the teacher 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 is not habitually truant and 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. PED will continue to maintain the contract for the universal screening assessment.

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.

DUPLICATION

House Bill 93 is a duplicate.

TECHNICAL ISSUES

Paragraph A of Section 3 (Page 2, Line 16) includes a definition of “academic proficiency”; however the term is not used again in the Act.

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. During the 2012-2013 school year, only 55.2 percent of third graders scored proficient or above on the New Mexico Standards Based Assessment in reading. Research indicates 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 3rd grade, the first group of 3rd graders was subject to retention if they scored at the basic level on the 3rd 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. 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.

RSG/ds