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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/15  
 SPONSOR Kernan LAST UPDATED 03/17/15 HB \_\_\_\_\_  
 SHORT TITLE School Grade Promotion & Retention SB 66  
 ANALYST Gudgel

### 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)

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

Senate Bill 66 repeals Section 22-2C-6 NMSA 1978 of the Public School Code – Remediation programs; promotion policies; restrictions – and enacts a new Section 22-2C-6 NMSA 1978 – Grade promotions; intervention; remediation programs; retention policies; restrictions – that outlines identification, intervention, and remediation policies for kindergarten through high school students. Provisions related to students in fourth grade and beyond are relatively similar to what is currently in law.

New provisions related to kindergarten through third grade students require administration of a reading screening assessment to these students at the beginning of each school year, and if the student is identified as deficient in reading, the development of a reading improvement plan.

Beginning with the 2016-2017 school year, third grade students who are not proficient in reading will not be promoted if they cannot demonstrate grade-level proficiency by the beginning of the next school year unless they meet one of four enumerated exceptions.

### FISCAL IMPLICATIONS

Ending social promotion is one of the Governor’s priorities. PED has not provided an 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 and charter schools to

implement effective interventions and remediation.

The FY13, FY14, and FY15 appropriations included funding to address early literacy pursuant to the PED's early literacy initiative "Reads to Lead" as follows: FY13 \$8.5 million, FY14 \$11.5 million, and FY15 almost \$14.5 million.

House Bill 2 currently includes \$15 million for PED's early literacy initiative, Reads to Lead. The funding supports administration of the DIBELS Next and IDEL (Spanish reading assessment tool) to 106 thousand students at an estimated cost of \$12 per student. During the 2014-2015 school year, approximately 100 thousand students participated, a significant increase over the previous school year as additional school districts participated. PED proposes to use the remaining funds support school districts, charter schools, school administrators, teachers, reading coaches, and parents with professional development on evidence-based reading instruction and intervention aligned with new content standards, using formative assessment data to drive instruction, and strategies for parents to support students' reading acquisition at home; and to allocate to school districts, charter schools, and regional education to provide reading coaches, professional development and reading intervention materials.

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

PED has not targeted Reads to Lead funding to the state's lowest performing students nor the state's most at-risk students in FY13, FY14, or FY15. In 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). School district and charter school awards in FY15 were again made pursuant to an agreement to distribute funds to school districts and charter schools based on school district or charter school size, without regard to the relative proficiency or at-risk status of enrolled students.

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 initiative 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. In FY14, the state saw a decrease in third-grade reading proficiency of 3.4 percentage points

## **SIGNIFICANT ISSUES**

During previous legislative sessions, 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 critical that decisions are 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 districts 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:

- K-3 Plus, an extended school year program, 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 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 the state's K-3 Plus extended school year program that adds an additional 25 instructional days for at-risk students. For example, the Legislature could choose to implement a mandatory statewide K-3 Plus program for all students scoring at the lowest level of reading proficiency or in all high poverty schools to address third-grade proficiency. K-3 Plus has several years of history in New Mexico and preliminary evidence of success.

K-3 Plus may be a relatively inexpensive remediation program because it builds on existing infrastructure. The average annual cost of K-3 Plus is approximately \$1,231 per student and is based on the funding formula unit value. If the state mandated K-3 Plus for the lowest scoring students, it is likely almost 26 thousand kindergarten through third grade students would need reading intervention. At the current per-student cost, LFC staff estimates it would cost \$32 million to reach those 26 thousand students. Current K-3 Plus funding of \$21.2 million funds more than 18 thousand students; therefore, \$10.8 million in additional funding could be used to reach students at risk of retention pursuant to this bill.

In the alternative, if the Legislature chose to implement a mandatory K-3 Plus program in all high-poverty schools, LFC staff estimates it would cost a total of approximately \$61.3 million to provide K-3 Plus to all kindergarten through third-grade students in each currently eligible

elementary school – schools that earn a D or F school grade or at least 80 percent of the enrolled students are eligible for free or reduced-price lunch. The FY15 appropriation totals little more than \$21.2 million.

LFC recommended increasing funding for K-3 Plus to \$27.7 million in FY16. 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 intervention and 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 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 college and career readiness, including decreased postsecondary remediation rates. Other costs, such as those associated with juvenile and adult criminal activity would also be expected to decrease. While these are financial savings that would not be immediately realized, they are important to consider. However, any savings would be dependent on the effectiveness of implementation.

#### Provisions Related to Kindergarten Through Third Grade

The bill requires administration of a screening assessment, adopted by PED, to kindergarten students within the first nine weeks of school and first- through third-grade students at the beginning of the school year to screen for reading skills. If the screening results indicate a student is “deficient in reading”, which is not defined in the bill, the student assistance team – composed of the student’s parent, teacher, school counselor and administrator, and student advocate if desired – will be required to develop a reading improvement plan for the student. The bill allows a parent to refuse intervention so long as it is done in writing.

The bill requires each public school to use data from the 2013-2014 school year as baseline data on reading proficiency for students in kindergarten through third grade to establish when a student should be provided with an intervention and remediation program. Assuming PED adopts the DIBELS Next and IDEL as the screening assessment, assessment data will not be available for some students as several school districts did not participate in these assessments during the 2013-2014 school year. It is also unclear why the bill includes data that is a year old as baseline data on page 2, line 13. Given that the bill will become effective, if enacted, at the end of the 2015-2016 school year and the bill requires intervention beginning with the 2015-2016 school year, the Legislature may want to consider setting the baseline year as the 2014-2015 school year

Pursuant to the bill, beginning with the 2015-2016 school year, parents of kindergarten through third grade students who are not proficient in reading at the end of the first grading period will be given notice that their student is not proficient and that the student will be given “intensive targeted instruction.” There is no definition of “proficient in reading.” The bill defines “intensive targeted instruction” as extra instruction that is provided for small groups of students or individual students that is no less than 20 minutes per day five days a week or the equivalent. The bill defines “reading proficiency” as a score on the statewide standards-based assessment (SBA) that is higher than the lowest level established by the department. PED has established

four proficiency levels – beginning steps, nearing proficient, proficient, and advanced. Third grade is the first year students are tested using the SBA. During the 2013-2014 school year, 25,462 third-grade students were tested. Of those students 24.3 percent or 6,187 students tested at beginning steps, the lowest level. However, another 23.9 percent, or 6,085 third-grade students tested were not proficient, testing at nearing proficiency. The bill does not mandate retention for students testing at nearing proficiency – only those student testing at beginning steps. The chart below shows reading proficiency of third-grade students by subgroup and proficiency level.

Third-Grade Reading Proficiency - 2013-2014					
Group	Number Tested	Beginning Step	Nearing Proficient	Proficient	Advanced
<b>All Students</b>	25,462	24.3%	23.9%	45.3%	6.5%
Female	12,534	20.2%	23.8%	48.3%	7.7%
Male	12,926	28.2%	23.9%	42.5%	5.4%
Caucasian	6,333	14.6%	18.0%	55.5%	12.0%
African American	574	26.3%	25.6%	43.4%	4.7%
Hispanic	15,672	26.3%	25.4%	43.5%	4.8%
Asian	354	9.9%	13.8%	57.3%	18.9%
American Indian	2,522	37.6%	30.1%	30.1%	2.2%
Economically Disadvantaged	18,926	28.7%	26.4%	40.7%	4.1%
Students w Disabilities	3,645	62.8%	18.1%	14.7%	4.4%
English Language Learners, Current	5,633	38.9%	27.4%	31.3%	2.4%
Source: PED					

The following school year – 2016-2017 – promotion and retention decisions for each third grade student will be as follows:

- If the student is proficient at end of third grade they will be promoted to fourth grade.
- If the student is not proficient at end of third grade:
  - - The student will be required to participate in remediation, and if proficiency is achieved the student will be promoted to fourth grade with certification by the school district.
    - If after remediation the student is still not proficient, the student will be retained in third grade with a reading improvement plan that is different than the one they received the previous year.

The bill exempts third grade students from the mandatory retention policy if they meet one of the four exemptions enumerated in the bill as follows (a drafting error references Subsection G on page 9, line 24 and it should reference Subsection E):

- Scores at the 50<sup>th</sup> percentile or higher on a PED-approved, norm-referenced assessment;
- Is an English language learner who is proficient in a language other than English on a valid and reliable reading assessment or who has had less than 2 years of instruction in English for speakers of other languages;
- Is a special education student, in which case they shall be assessed, promoted, or retained pursuant to their individualized education program (IEP); and

- Is a student who has already been retained once in kindergarten first, or second grade.

The bill prohibits retention of a student in kindergarten through third grades for more than one year because the student is not proficient in reading.

#### Provisions Related to Fourth Through Eighth Grade

The bill requires notification of parents of fourth through eighth grade students who are not “academically proficient” no later than the end of the second grading period. The existing statute that is being repealed included a definition of “academically proficient”; however, it has been eliminated in the new section. The bill additionally requires a conference with the student assessment team to develop an intervention plan that includes timelines, academic expectations, and accountability, including strategies parents can use to help the student achieve proficiency. Intervention shall be implemented immediately.

Promotion decisions for fourth- through eighth-grade students are to be based on whether the student is academically proficient at the end of each grade. Students who are academically proficient will be promoted, while students who are not academically proficient will be required to participate in remediation. If, after the second year of a different remediation or intervention program, a student is still unable to achieve “academic proficiency”, the school district or charter school will be required to provide the student with an alternate program.

The bill requires each school district and charter school to include the percentages of academically proficient students by school and charter school in their annual accountability report pursuant to 22-2C-11 NMSA 1978. Given the definition of “school district”, this requirement appears to require school districts to list both traditional and charter schools and charter schools to list district schools and charter schools.

The bill requires the use of the standards-based assessment in grades three through eight to assess each student’s growth in reading and other academic subjects.

#### Other Provisions

Provisions in the bill limit students that will be placed in an alternative program to those who are unable to demonstrate reading proficiency for two successive school years; current law is more expansive requiring any student who is not “academically proficient” for two successive to be placed in an alternative program.

Provisions for summer school and extended day intervention and remediation programs for ninth- through 12<sup>th</sup>-grade students remain the same as current law.

### **PERFORMANCE IMPLICATIONS**

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

### **ADMINISTRATIVE IMPLICATIONS**

The bill will increase PED and public school duties. PED will need to ensure department rules conform to the changes proposed in this bill, and will be required to approve a 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.

### **CONFLICT, RELATED AND DUPLICATION**

House Bill 41 began as a duplicate; however, HEC made several technical amendments to address a number of concerns noted below.

### **TECHNICAL ISSUES**

The term “district reading plan” is never used in the bill.

The first occurrence of “grades” on line 22 of page 5 should be removed to be consistent with the rest of the bill.

Section B and C on page 4, and line 8 on page 5 and line 4 on page 6 use the term “reading proficiency” as applicable to kindergarten through third-grade students in both of these sections. However, the definition of “reading proficiency” relates to a score on the state’s standards-based assessment that is not administered to kindergarten through second-grade students.

The bill defines “school district” as including both state and locally chartered charter schools; however, there is an occurrence of “school district” that does not appear consistent with the definition on page 8, line 24.

The bill does not have a definition of “deficient in reading” as used on page 5 to trigger intervention with kindergarten through third-grade students, nor does it have a definition of “academic proficiency” as it pertains to fourth- through eighth-grade students in Section G and H. The bill also does not have a definition for “not proficient in reading” (term is used on page 6, line 10).

Provisions related to fourth through eighth-grade students use the terms “intervention plan,” “reading improvement plan,” and “academic proficiency plan” to refer to the same “plan.”

Subsection M refers to Subsection G on page 9, line 24 – however, this should reference Subsection E.

Section 4 on page 10 is inconsistent with lines 6 through 9 on page 7 – Section 4 states a student may not be retained for more than one year in kindergarten through second grade; however, page 7 language states students shall not be retained more than once between kindergarten and third grade because they have not achieved reading proficiency.

### **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 state's standards-based assessment each year. During the 2014-2015 school year, only 51.8 percent of third graders scored proficient or above on the 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 four-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 \$2,000 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.

Additionally, the Legislature could require retention decisions to be based on more than a single data point, similar to the teacher evaluation system, including short-cycle assessments, classroom work, classroom test scores, and teacher observations.

RG/je/bb