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FISCAL IMPACT REPORT

ORIGINAL DATE 09/16/11

SPONSOR Smith and Espinoza LAST UPDATED 09/16/11 HB _____

SHORT TITLE Limit School Grade Promotions SB 23

ANALYST Gudgel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	**See Fiscal Impact	**See Fiscal Impact	**See Fiscal Impact		Recurring	

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)
 Albuquerque Public Schools (APS)
 Las Cruces Public Schools (LCPS)
 Rio Rancho Public Schools (RRPS)

SUMMARY

Synopsis of Bill

Senate Bill 23 repeals Section 22-2C-6 related to remediation programs, promotion policies, and restriction and enacts a new Section 22-2C-6. The bill contains an emergency clause. The new Section 22-2C-6 enacts portions of the existing 22-2C-6 that is being repealed. The bill includes the existing retention policy for first through seventh grade students who are not academically proficient, and current requirements to provide remediation to students who are not academically proficient.

The bill establishes a new mandatory retention policy for third grade students who are not reading proficiently by the end of third grade, requires that parents are notified that their third grade student is deficient at reading and in danger of being retained at the end of the first grading period, and prohibits parental waivers from retention. The retention policy takes effect during the 2013-2014 school year. Department-approved screening assessments for reading skills will be required for all kindergarten through third grade students, and if the student is deemed deficient in reading, the student assistance team shall immediately develop an academic improvement plan for the student. One screening assessment will be approved by PED for kindergarten students, and up to three assessments will be approved by PED for first through third grades.

The bill creates 5 new exemptions from both retention policies that exclude students from retention who: 1) score at least at the 50th percentile or at the proficient level on an alternative department-approved standardized assessment; 2) demonstrates mastery on a teacher-developed portfolio that is equal to at least proficient on the New Mexico Standards Based Assessment; 3) shows sufficient academic growth by meeting acceptable levels of reading and literacy performance specified by the department; 4) is an English language learner who reads proficiently in another language or who has had less than two years of instruction in English for speakers of other languages; or 5) is a student with a disability, who will be assessed, promoted and retained in accordance with the students individualized education program.

Other changes from current law include the following:

- The use of the New Mexico Standards-Based Assessments in grades three through eight to assess and evaluate each student's growth in reading ability and other academic achievement.
- PED approval of school board- and charter school governing body-approved proven remediation programs; and alternative programs for students who do not demonstrate academic proficiency for two successive school years.
- School districts and charter schools will be responsible for paying for remediation programs for kindergarten students.
- Beginning with the 2013-2014 school year, depending on availability of funds, school districts and charter schools will be responsible for paying for the cost of summer and extended day remediation programs in grades nine through twelve.
- Parents will be provided specific strategies to use in helping a child achieve academic proficiency when it is determined that the student is not academically proficient.
- Public schools shall establish baseline assessment data on reading proficiency for students in grades three, five and eight using data from the 2010-2011 through 2012-2013 school year. Baseline data shall include levels of performance in reading based on NMSBA results below which a student must be provided with a remediation program or be retained in an intensive program that is different from the previous year's program.
- A mid-year promotion policy that allows a retained student to be promoted to the next grade midyear only upon agreement of the parent and the school principal.
- School principal of a school that includes any of grades kindergarten through eight shall establish procedures to ensure that an academic improvement plan is implemented for each student who requires one and that each plan includes a description of the student's reading deficiencies, the results from the NMSBA, and the reading strategies used for remedial and intensive instruction.

FISCAL IMPLICATIONS

Ending social promotion, the practice of graduating a student on to the next grade despite the student's lack of proficiency, is one of the Governor's top priorities. PED has not requested additional funding to accompany this initiative, but rather indicates that the cost of implementing this bill will be absorbed by school districts and charter schools. In August PED indicated there were \$230 million in federal funds that can be reprioritized to address the funding needs of this bill - \$113 million in Title I; \$90 million in Special Education (IDEA-B) with a 5 percent set-aside for early intervening services; \$19 million in Title II to support professional development; \$4 million in Title III to support English language acquisition; and \$4 million in School Improvement Grant funds. However, PED's analysis of the bill now indicates there are only

\$149 million in funds that could support literacy programs and literacy interventions: \$25 million in Title I carryover and \$108 million in current year allotment; \$4 million in prior year IDEA-B funding and \$12 million in current year IDEA-B funding.

PED indicates that 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 born by the districts are generally consistent with the approved uses for the early intervening services portion of IDEA-B and Title I.

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 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.

While funds should be reprioritized, it is important to note substantial deviations from current law that will place increased burdens on school district and charter school operating budgets. Estimates provided by Albuquerque Public Schools, Las Cruces Public Schools and Rio Rancho Public Schools are included.

Assessment of K-3

Pursuant to the changes, school districts and charter schools will be required to assess all kindergarten through third grade students for reading skills at the beginning of each school year. During the 2011 school year PED reports there were approximately 26,224 kindergartners, 26,127 first graders, 25,956 second graders, and 25,744 third graders (a total of 104,051 students). PED asserts they will procure one screening assessment for use with all kindergarten students to assess reading skills. The Department estimates the per student cost of the kindergarten screening assessment to \$11 per student based on national averages. The estimated cost of the assessment is approximately \$300 thousand and will be born by PED. However the bill does not designate PED as being financially responsible for procuring the screening assessment and it is possible in future years that this cost is passed on to school districts and charter schools. It is also important to note that the source of the funds the department intends to use is the \$2.5 million Section 5 appropriation made for the Governor's education initiatives.

The language of the Section 5 appropriation does not appear to allow PED to use these funds to purchase a kindergarten assessment. Section 4 did however include a recurring flow through appropriation to the department for early childhood education that the department could use for this purpose. APS indicates a district wide cost of \$235 thousand for kindergarten assessments, and LCPS estimates costs to total \$126 thousand.

PED's analysis does not address the cost of screening assessments for grades one through three. Some districts statewide are already assessing all first through third graders. If assessment of all first through third grade students is widespread across the state and the screening assessments selected by PED are generally those in use by districts and charters it is likely that there would be minimal annual increased costs associated with the assessment of first through third graders. However, if districts are not assessing first through third grade students or if PED approves screening assessments that districts and charters are not currently using costs for annual assessments could be as high as \$1.2 million a year.

Interventions and Remediation to K-3 Students Deficient in Reading

School districts and charters schools are currently required to provide remediation to first grade through eighth grade students who are not academically proficient. The bill now requires statewide assessment of kindergarten through third grade students to specifically identify reading deficiencies. It is likely that the requirements of the bill will result in increased identification of students who require remediation.

Based on 2010-2011 NMSBA data, approximately 46.8 percent, or 12,048 third-grade students are not reading on grade level. There is no state mandated assessment tool administered to kindergarten through second grade students, and therefore no statewide data about the percent of kindergarten through second grade students who are deficient in reading. It is a reasonable assumption that similar percentages of kindergarten through second grade students would be deemed deficient in reading, necessitating placement in a remediation program. Based on this assumption, it is likely that approximately 48,705 kindergarten through third grade students will be required to participate in reading remediation programs. Currently, it is unknown how many kindergarten through third grade students participate in remediation because they are not academically proficient, and how many more will be identified to participate as a result of the universal assessments.

APS estimates intervention materials and interventionists for students in K-3 will cost approximately \$14.2 million annually. This assumes 6,903 students identified for remediation, an additional 191.75 interventionists, and 90 minute intensive pull out session with class sizes of 12. Las Cruces estimates, based on similar assumptions, total \$3 million annually. Rio Rancho estimates are based on 1,071 non-special education kindergarten through second grade students estimated at the cost of \$293.44 per student. Based on this assumption, Rio Rancho estimates interventionists for kindergarten to second grade to cost little more than \$314 thousand. It is likely the third grade class would increase this estimate by little more than \$100 thousand.

3rd Grade Retention

The bill defines "reading proficiency" as a score on the NMSBA higher than the lowest level established by PED. In New Mexico, during the 2010-2011 school year there were approximately 25, third graders. During the 2010-2011 school year, 21.9 percent, or approximately 5,673 third graders scored at "beginning steps", the lowest level established by PED. This number increased more than 6 percent from the 2009-2010 school year. The bill

outlines 5 exemptions that will allow a third grader who is not proficient in reading to move on to fourth grade, including qualifying ELL and special education students: ELL and special education students total 4,508. It is reasonable to assume a portion of these students would qualify for an exemption along with students qualifying on the first three exemptions, decreasing the total number of third graders to be retained to between 1,100 and 4,000.

APS estimates the impact on the district to be in the form of purchasing new, different materials for students repeating third grade who must have new intensive instructional materials. The total cost to the district is estimated at \$867,419 thousand. Las Cruces estimate, based on similar assumptions, indicated an impact of \$35 thousand each year. These assumptions include additional teachers and training, and materials for both teachers and students.

Summer School Remediation Programs

The bill also requires school districts and charter schools to provide remediation in summer school programs to first through seventh grade students who are not academically proficient (current law does not require the required level of remediation to be provided in summer school but only that the student shall participate in the required level of remediation). PED has not addressed the mandate to provide remediation in summer school to student in first through seventh grade in their analysis. APS estimates the additional costs to be between \$9.2 million and \$15.6 million. Las Cruces estimates summer school remediation will cost \$899 thousand and \$1.3 million. The districts arrive at the low estimate based on current per student costs of summer school, excluding food service and transportation. The high estimates are based on estimated actual costs of providing summer school, including teachers, administrators, maintenance and food service staff. Rio Ranch estimates the summer school requirement will cost approximately \$1.2 million based on current per student costs of \$522 per student.

High School Summer School

The bill shifts responsibility to pay the cost of summer and extended day remediation programs for students in grades nine through twelve from the parent to the school district or charter school, depending on availability of funds, beginning with the 2013-2014 school year. APS, Las Cruces and Rio Rancho estimate these costs to be relatively low. APS estimates \$156 thousand, Las Cruces estimates approximately \$53 thousand, and Rio Rancho estimates the costs to be \$159 thousand.

While district estimates may be on the high side, some of the uncertainty exists as a result of the requirements in the bill that mandate that PED approve remediation programs, approve alternative programs, and approve screening assessments in kindergarten through third grade. For example, districts are concerned they may incur costs procuring new remediation programs and alternative programs if PED does not approve the programs currently in use.

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 a waiver provision, for first through seventh grade students who are not academically proficient.

Senate Bill 23 creates a new mandatory third grade retention policy. The trigger for the mandatory third grade retention policy is “reading proficiency”. The bill defines “reading proficiency” as a score on the New Mexico Standards-Based Assessment (NMSBA) higher than

the lowest level established by PED. Students who score at the beginning steps level on the NMSBA that don't meet one of the 5 exemptions will be held back in third grade for no more than one year.

The 5 exemptions from the mandatory retention policy (and the academic proficiency policy) are for students who:

- Score at least in the 50th percentile or at the proficient level on an alternative PED-approved standardized assessment;
- Demonstrate proficiency on a teacher-developed portfolio;
- Shows sufficient academic growth by meeting acceptable levels of reading and literacy performance specified by PED;
- Is an English language learner who reads proficiently in a language other than English on a reading assessment in that language or who has had less than 2 years of instruction in English; and
- Is a student with a disability who shall be promoted and retained in accordance with the provisions of the student's individualized education program (IEP).

Based on the new mandatory retention policy for students who are not reading proficiently, it is likely that the retention policy will affect between 1,100 and 4,000 students, or 9 percent to 33 percent of the state's third graders who are not proficient in reading, depending on the number of students who qualify for an exemption.

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 number of 4th and 8th 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 creates additional administrative duties for PED, school districts and charter schools. PED will be required to approve one screening assessment to screen all kindergartners statewide, and up to three screening assessments to screen all first, second and third grade students statewide. Remediation programs selected by school districts and charter schools for students in kindergarten through eighth grade will also be required to be approved by PED. These decisions - what assessments to use and what remediation programs are used - have historically been local decisions. Currently, school districts and charter schools are allowed to select screening tools and remediation programs without PED approval. Remediation programs are currently filed with the department.

PED will be required to establish levels of growth in reading and literacy performance that will qualify a student for an exemption from the retention policies established by the bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 2 is a related bill dealing with third grade retention.

TECHNICAL ISSUES

Page 4, line 5 gives the local school board the authority to approve school-district selected remediation programs. APS notes that this is traditionally a duty of the superintendent, as the board does not have the authority to make these decisions.

Page 4, line 8 refers to the “governing authority” of a charter school, however Section 22-8B-2 (Definitions) uses the term “governing body.”

Page 5, Section F requires parental notification no later than the second grading period. Most schools have 4 nine-week grading periods, resulting in parental notification prior to the Christmas break. However, there are a number of schools on a trimester system or year round schedule. These schools would not be required to notify parents until the second semester generally falling in the spring semester.

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 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

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 3rd grade, the first group of 3rd graders were 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 a reading assessment for kindergarten students during the special legislative session to ensure New Mexico is competitive in the Race to the Top Early Challenge Grant and address other components of the bill during the 2012 regular session.
- Introduce a Memorial that requests PED study the funding of the requirements of the bill, including uses of current federal funds, and possibility and reality of reprioritizing those dollars.
- Implement effective strategies to improve literacy scores, including better preparation of elementary teachers. The Public Education Department 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.