

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** SB 640

**51st Legislature, 1st Session, 2013**

**Tracking Number:** .192024.1

**Short Title:** Reading Proficiency Act

**Sponsor(s):** Senators John M. Sapien and Representative Rick S. Miera

**Analyst:** LaNysha Adams

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**Bill Summary:**

Focusing on students in grades K-8, SB 640 amends the *Public School Code* and creates the *Reading Proficiency Act* to ensure that students who experience difficulties with reading proficiency are provided multiple opportunities for early intervention and remediation.

Among its provisions, the SB 640 requires:

- baseline assessment data on reading proficiency for students in grades K-3;
- intervention and remediation measures for students in grades K-8 who do not demonstrate reading proficiency;
- new reporting requirements; and
- school districts to maintain student intervention files.

SB 640 defines a number of terms:

- **“academic improvement plan”** means a written document developed by the student assistance team that describes the specific reading standards required for a certain grade level that a student has not achieved and prescribes intervention and remediation programs that have demonstrated effectiveness and can be implemented during the intensive targeted instruction within the school day or during summer school or extended day or week programs and with tutoring;
- **“intensive targeted instruction”** means extra instruction in either small groups or as individuals that shall be no less than 20 minutes per day and five days per week or the equivalent;
- **“intervention”** means targeted instructional practice for individual students or small groups of students aligned with the results of a valid and reliable assessment or response to intervention;
- **“reading proficiency”** means a score on a valid and reliable assessment that is higher than the lowest level established by the Public Education Department (PED);
- **“remediation programs”** includes summer school, extended day or week programs, tutoring, progress-based monitoring, and other research-based models for student improvement;
- **“school district”** includes both a public school district and a locally chartered or state-chartered charter school;
- **“screening”** means a district-determined assessment that is the same for all school districts, is approved by PED, and that measures the acquisition of reading skills;

- **“student assistance team”** means a group consisting of a student’s:
  - teacher;
  - school counselor;
  - school administrator;
  - parent; and
  - if the student or parent wishes, a student advocate chosen by the student or parent; and
  
- **“valid and reliable assessments”** means assessments that are:
  - school district-approved;
  - appropriate to targeted populations; and
  - thoroughly tested, peer-reviewed, and accepted by authorities and practitioners in the field.

### **K-3 Baseline Assessment Data, Intervention, and Remediation**

In addition to requiring the screening to be given at the beginning of the school year to students enrolled in grades K-3, provisions in this section of SB 640 require that, for students in grades K-3:

- each public school must use the screening results to establish baseline assessment data on reading proficiency;
- prescribed intervention and remediation programs and academic improvement programs must be adopted and aligned with the screening results and be aligned with the state standards for each grade level and subject area pursuant to the uniform grade and subject curricula provisions in the *Public School Code*;
- beginning in school year 2013-2014, districts must approve prescribed intervention and remediation programs and academic improvement programs that have demonstrated effectiveness in providing special instructional assistance to students in kindergarten through grade three who do not demonstrate reading proficiency;
- if the screening results indicate that a student has not achieved reading proficiency, the student assistance team must develop an reading improvement plan for the student by the 80<sup>th</sup> day of the school year that delineates the areas in which the student needs prescribed intervention and remediation programs that must be included in the plan, including the specific strategies for a parent to use in helping the child achieve reading proficiency;
- the parent of a student who is in kindergarten or first, second or third grade and who has not achieved reading proficiency must be given notice by the 80<sup>th</sup> day of the school year that the student must be provided with intensive targeted instruction; and
- if a parent refuses to allow the student to participate in any prescribed intervention or remediation, the school district must provide an appropriate form that must be signed by the parent that indicates the parent’s refusal to allow the student to participate in the prescribed intervention or remediation.

## **Intervention and Remediation for Students in Grades 4-8**

As provided in this section of SB 640:

- school districts must use a valid and reliable assessment to assess the reading proficiency of students;
- prescribed intervention and remediation programs, academic improvement programs, and promotion policies must be aligned with valid and reliable assessment results and be aligned with the state standards for each grade level and subject area pursuant to the uniform grade and subject curricula provisions in the *Public School Code*;
- if a student does not demonstrate reading proficiency:
  - a parent must be notified in writing no later than the end of the first grading period of the school year;
  - a conference with the student assistance team must be held to discuss strategies, including prescribed intervention and remediation programs available to assist the student in achieving reading proficiency;
  - at the meeting, the areas in which the student needs improvement and the available strategies, prescribed intervention and remediation programs must be presented orally and in writing to the parent, and an academic improvement plan must be developed that contains timelines, academic expectations and measurements to be used to verify that a student is achieving reading proficiency;
  - the parent must be provided with specific strategies to use in helping the student achieve reading proficiency; and
  - the school must immediately implement prescribed intervention and remediation programs and the academic improvement plan for the remainder of the school year; and
- for each student who does not demonstrate reading proficiency, the school must maintain a student intervention file that contains a copy of the written notice to the parent and a description of the implemented intervention, remediation programs and academic improvement plan, and any promotion or retention recommendations; and
  - the student intervention file must be maintained as part of the student's permanent record to help successive teachers and schools meet the student's academic needs through further intervention, remediation and, if necessary, retention.

## **Reporting Requirements**

As provided in this section of SB 640:

- by September 30 of each year, each school district must provide to PED a professional development plan that includes proposals for teachers to receive professional development to adopt effective instructional strategies in the areas of reading;
- by May 15 of each year, each school district must include in its annual accountability report:
  - the number and percentage of students identified as requiring intervention;
  - the number and percentage of students who received intervention and remediation including the number and percentage of students who:

- achieved reading proficiency within the school year;
  - did not achieve reading proficiency within the school year and were recommended for retention;
  - were retained in the same grade; and
  - were not retained in the same grade due to a parental waiver;
- reading proficiency data for students who did not achieve reading proficiency and were promoted to the next higher grade due to a parental waiver; and
  - student assistance team promotion and retention decisions for students who previously were promoted to the next higher grade due to a parental waiver; and
- PED must report to the Legislative Education Study Committee (LESC) on alternate months during the interim about the accountability reports received, programs adopted and implemented, data maintained, and goals established pursuant to the *Reading Proficiency Act*.

### **Promotion and Retention for Students in Grades 1-8**

Provisions in this section change the existing requirement of academic proficiency to proficiency in reading.

Regarding promotion and retention decisions, if at the end of grades 1-7, a student:

- has achieved reading proficiency, the student shall enter next highest grade;
- has not achieved reading proficiency, the student shall participate in remediation pursuant to the *Reading Proficiency Act*. Upon certification by the school district that the student has achieved reading proficiency, the student shall enter the next higher grade; or
- has not achieved reading proficiency after completion of the remediation and upon recommendation of the teacher and school principal the student shall either be:
  - retained in the same grade for no more than one school year with an academic improvement plan developed by the student assistance team in order to achieve reading proficiency, at which time the student shall enter the next higher grade; or
  - promoted to the next grade if the parent refuses to allow the child to be retained. In this case, the parent shall sign a waiver indicating his or her intention that the student be promoted to the next higher grade with an academic improvement plan designed to address specific needs.

If at the end of grade 8, a student:

- has not achieved reading proficiency, the student shall be retained for no more than one school year to achieve reading proficiency; or
- if the student assistance team determined that retention of student in the eighth grade will not assist the student to achieve reading proficiency, the team shall design a high school graduation plan to meet the student's needs for entry into the work force or a post-secondary education institution; and
- does not achieve reading proficiency for two successive school years the student shall be referred to the student assistance team for placement in an alternative program designed by the school district.

Additional provisions in SB 640 require that:

- the academic plan must be developed by the student assistance team outlining timelines and monitoring activities to ensure academic progress; and
- students failing to achieve reading proficiency at the end of that year as measured by grades, performance on school district assessments and other measures identified by the school district must be retained in the same grade for no more than one year in order to have additional time to achieve reading proficiency.

**Fiscal Impact:**

\$3.6 million is appropriated from the General Fund to PED for expenditure in FY 14 to fund professional development for teachers' adoption of effective reading instruction strategies.

For FY 14, CS/HB 2a et al., the *General Appropriation Act of 2013* includes the following appropriations from the General Fund to PED:

- \$11.0 million for an Early Reading Initiative, including \$3.6 million to be transferred to the teacher professional development fund to support training on effective reading instruction and data-driven decision-making and for regional and district reading coaches and intervention support in the district to support teachers with the implementation of a common formative assessment tool and reading interventions;
- \$14.95 million for Pre-Kindergarten (Pre-K) services; and
- \$15.95 million for K-3 Plus.

With regard to the K-3 Plus program, CS/HB 2a et al., includes the following language:

- in the event that school district and charter school requests for funding for the 2013 K-3 Plus program are insufficient to spend the K-3 Plus appropriation, PED is allowed to transfer up to \$2.0 million to the early reading initiative; and
- requires PED to consider funding needs for June 2014 programs in the calculation of unneeded funds.

The Legislative Finance Committee's (LFC) Fiscal Impact Report (FIR) suggests that the Legislature may want to consider implementing a mandatory statewide K-3 Plus program in all high poverty schools as a cost saving measure related to retention costs.

The FIR also indicated that:

- while the Legislature appropriated \$8.5 million for a statewide early reading initiative to PED for FY 13, the funds were competitively distributed through the New Mexico Reads to Lead! grant application process (see "Background," below); and
- the funds distributed to schools that received grants for the New Mexico Reads to Lead! initiative did not appear to be targeted to the state's lowest performing students nor the state's most at-risk students.

## **Fiscal Issues:**

According to the PED bill analysis, a \$13.5 million appropriation would be needed if SB 640 is enacted:

### **To PED**

- \$3.8 million to support interventions for struggling readers, reading coaches, support for interventions, and district level training on effective reading instruction; and
- to support district and school administrators, teachers, reading coaches, and parents with professional development on:
  - 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.

### **To Public School Districts**

- \$9.7 million to support school districts in early identification and support of struggling readers.

PED's bill analysis also states that:

- approximately 41,973 students in grades K-8 will require intervention in reading;
- districts will need additional funds to support schools with implementation of the screening assessment tool and interventions;
- the costs of screening assessments in reading are not covered in the appropriation for this bill;
- the cost of remediation increases as students advance in grade levels; and
- SB 640 does not provide an appropriation for remediation.

## **Substantive Issues:**

According to the PED bill analysis:

- districts have indicated that student assistance teams are often overburdened and SB 640 would further burden these teams; and
- promotion and retention policies that are aligned with school district-approved valid and reliable assessments will not provide consistent data across districts resulting in inconsistent statewide promotion and retention policies.

A national survey, *Passing on Failure: District Promotion Policies and Practices*, conducted in 1997, concluded that "neither social promotion nor retention is an adequate response to student underachievement." The study suggested that school districts establish performance standards for each grade level and institute policies that prevent early school failure, such as, all-day kindergarten, class-size reduction, and assuring that at-risk students have excellent reading instruction in the early grades. Other conclusions included extending time for instruction, attracting and retaining the best teachers, and providing teachers with opportunities to learn how to teach students to read.

According to findings from *Double Jeopardy: How Poverty and Third Grade Reading Skills Influence High School Graduation*, a report published by the Annie E. Casey Foundation in 2012, one in six children who are not reading proficiently in third grade do not graduate from high school on time, a rate four times greater than that for proficient readers.

### **Technical Issues:**

According to the PED bill analysis, SB 640 defines “reading proficiency” as a score on a valid and reliable assessment that is higher than the lowest level established by PED, which could be interpreted as referring to the New Mexico Standards-based Assessment. The bill further defines “valid and reliable assessment as school-district approved and peer reviewed,” which the PED analysis states presents a conflict.

The PED bill analysis also notes that SB 640:

- addresses remediation in kindergarten, but does not address promotion or retention policies for kindergarten students; and
- does not include a good cause exemption for English language learners who may not have had sufficient time in school to acquire proficiency in English.

The FIR notes that while SB 640 requires school districts and charter schools to use a valid and reliable assessment, it does not specify when the assessment must be administered.

### **Background:**

According to retention data received from PED during the 2013 legislative session, for school year 2011-2012:

- 844 (3.2 percent) of first graders were retained;
- 516 (2.0 percent) of second graders were retained;
- 287 (1.12 percent) of third graders were retained;
- 179 (0.69 percent) of fourth graders were retained;
- 126 (0.49 percent) of fifth graders were retained;
- 133 (0.53 percent) of sixth graders were retained;
- 152 (0.62 percent) of seventh graders were retained;
- 145 (0.60 percent) of eighth graders were retained;
- 3,084 (11.76 percent) of ninth graders were retained;
- 2,761 (11.58 percent) of tenth graders were retained;
- 1,527 (7.41 percent) of eleventh graders were retained; and
- 1,445 (6.91 percent) of twelfth graders were retained.

### ***Current Law***

In 2000, the Legislative Education Study Committee (LESC) endorsed legislation that was enacted to address the problem of students not achieving at grade level but promoted to the next grade despite being unprepared – a practice known as “social promotion.” Under this law:

- “academic proficiency” means mastery of the subject-matter knowledge and skills specified in state academic content and performance standards for a student’s grade level;

- a student in grades 1-7 who is not academically proficient after completing a prescribed remediation program may be:
  - retained in the same grade for no more than one school year with an academic improvement plan developed by the student assistance team; and once the student becomes academically proficient, the student enters the next higher grade; or
  - promoted to the next grade if the parent refuses retention and signs a waiver indicating the parent's desire that the student be promoted to the next higher grade with an academic improvement plan designed to address specific academic deficiencies. If the student promoted through parental waiver still fails to achieve grade-level proficiency at the end of that year, the student must be retained in the same grade for no more than one year in order to have additional time to achieve academic proficiency; and
- a student who is not academically proficient at the end of grade 8:
  - must be retained in that grade for no more than one school year to become academically proficient through an academic improvement plan that is clear, specific, and developed by the student assistance team; or
  - if the student assistance team decides that retention will not help that student, the team must design a high school graduation plan to meet the student's needs for entry into the workforce or a postsecondary educational institution.

### ***The New Mexico Reads to Lead! Early Reading Initiative***

During the 2012 interim, the LESC heard testimony about PED's use of funding for reading initiatives statewide, including:

- the appropriation of \$8.5 million for FY 13 to support early reading initiatives, of which PED set aside:
  - \$3.0 million for a common K-3 assessment to be used across all schools and districts in the state;
  - \$4.5 million for reading coaches and interventions for which districts could apply; and
  - \$1.0 million for professional development of teachers, coaches, and administrators focused on effective reading instruction and using data to drive instruction aligned with the Common Core State Standards;
- the funds provided to districts through the Reads to Lead! application process; and
- a recently launched PED reading website with resources in both English and Spanish.

PED reported that of the 44 districts and charter schools that had applied, 13 received awards.

### ***K-3 Reading Screening Assessment in New Mexico***

According to information given by PED staff to the LESC during the 2012 interim, the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) Next:

- is the tool selected for the state’s K-3 reading screening assessment;
- replaces the current version of DIBELS and includes a series of research-based enhancements that increase the ease of use as well as the reliability and validity of the assessment;
- was used by 40 districts and 10 charter schools that reported during school year 2012-2013;
- results can be linked to targeted interventions from core reading programs such as *Treasures*, *Trophies*, and *Reading Street*; and
- offers an electronic version called mCLASS® that is administered on a mobile device and provides:
  - frequent progress monitoring;
  - instructional tools for teachers; and
  - reporting capabilities for teachers and administrators.

### ***Reading Proficiency in New Mexico***

Of the 75,792 students tested on the Standards-based Assessments in grades 3-5 in 2012, approximately:

- 52.4 percent of all third graders statewide are at or above proficiency in reading;
- 49.9 percent of all fourth graders statewide are at or above proficiency in reading; and
- 55 percent of all fifth graders statewide are at or above proficiency in reading.

Additionally, 2012 statewide the Standards-based Assessment data reveal that:

- 68.5 percent of white third grade students, 66.4 percent of white fourth grade students, and 72.5 percent of white fifth grade students are at or above proficiency in reading;
- 48.8 percent of African-American third grade students, 50 percent of African-American fourth grade students, and 49 percent of African-American fifth grade students are at or above proficiency in reading;
- 47.8 percent of Hispanic third grade students, 45 percent of Hispanic fourth grade students, and 50.3 percent of Hispanic fifth grade students are at or above proficiency in reading;
- 74.3 percent of Asian third grade students, 75.5 percent of Asian fourth grade students, and 77.5 percent of Asian fifth grade students are at or above proficiency in reading;
- 36.3 percent of Native American third grade students, 34.5 percent of Native American fourth grade students, and 35.5 percent of Native American fifth grade students are at or above proficiency in reading;
- 44.8 percent of economically disadvantaged third grade students, 42.1 percent of economically disadvantaged fourth graders, and 47.2 percent of economically disadvantaged fifth graders are at or above proficiency in reading;
- 20.5 percent of third grade students with disabilities, 17 percent of fourth grade students with disabilities, and 18.3 percent of fifth grade students with disabilities are at or above proficiency in reading;
- 28.1 percent of third grade students who are currently classified as English language learners (ELLs), 18.7 percent of fourth grade students who are currently classified as ELLs, and 19.8 percent of fifth grade students who are currently classified as ELLs are at or above proficiency in reading; and

- 65.5 percent of third grade students who have exited ELL classification, 57.3 percent of fourth grade students who have exited ELL classification, and 61.1 percent of fifth grade students who have exited ELL classification are at or above proficiency in reading.

The data from the 2011 National Assessment of Educational Progress (NAEP), the only assessment that provides comparable data among the states and is known as the *Nation's Report Card*, show little to no improvement in fourth grade reading proficiency for New Mexico:

- just 20 percent of fourth graders tested proficient or better in reading; and
- this performance was not statistically different from that on the 1992 NAEP in reading for fourth graders in New Mexico, while NAEP scores in reading for fourth graders nationwide have improved from 27 percent proficient in 1992 to 34 percent proficient in 2011.

**Committee Referrals:**

SEC/SFC

**Related Bills:**

SB 225 *Early Childhood Teacher Retention Project*

SB 260a *Academic Success Through Remediation Act* (Similar to HB 257)

SB 380 *Compulsory Education for Children Age 4 & Up*

SB 474 *School Intervention & Remediation Practices*

HB 257 *Academic Success Through Remediation Act* (Similar to SB 260a)