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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/17/13  
**LAST UPDATED** 03/11/13    **HB** 215/aSEC

**SPONSOR**    Roch

**SHORT TITLE**    Remove School AYP & Funding Incentives    **SB** \_\_\_\_\_

**ANALYST**    Gudgel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Education Department (PED)

### SUMMARY

#### Synopsis of SEC Amendment

Senate Education Committee Amendment to House Bill 215 amends the following sections of the Public School Code to eliminate reference to adequate yearly progress (these sections were not included in the original bill):

- Section 22-1-1.2 Legislative Findings and Purpose; Section 22-1-2 Definitions; Section 22-1-4 Free Public Schools--Exception--Withdrawing and Enrolling--Open Enrollment;
  - The changes proposed by the amendment to Section 22-1-4 NMSA 1978 changes the priorities for student enrollment within a district at particular schools, giving second enrollment priority to students in schools rated “F” for two of the prior four years.
- Assessment and Accountability Act – Section 22-2C-8 Adequate Yearly Progress--Supplemental Incentive Funding--State Program for Other Achievement; and Section 22-2C-10 Schools in Need of Improvement Fund—Created;
- A-B-C-D-F Schools Rating Act – Section 22-2E-4 Annual Ratings--Letter Grades--Ratings Based on Standards-Based Assessments;
- Charter School District Act of 2005 – Section 22-8E-6 Renewal of Charter;
- School Personnel Act – Section 22-10A-14 Certificates of Waiver;
- Hispanic Education Act – Section 22-23B-6 Statewide Status Report –

The amendment also replaces the sections repealed in the original bill with the following sections: Section 22-2C-7, 22-2C7.1, and 22-2C-12 NMSA 1978. Many of the changes included in the SEC Amendment were included in Technical Issues of the FIR noted below.

### Synopsis of Original Bill

House Bill 215 amends the Assessment and Accountability Act to remove reference to adequate yearly progress, repeals three sections of the Act, and enacts a new section requiring the Public Education Department to report to the Legislative Education Study Committee the department's proposed changes to law to comport with applicable federal requirements by the end of October 2014 and subsequent years.

The bill repeals Sections 22-2C-7 (Adequate yearly progress; school improvement plans; corrective action; restructuring), 22-2C-7.1 (Failing school subject to reopening as state-charter school; requirements) and 22-2C-8 (Adequate yearly progress; supplemental incentive funding; state program for other achievement) NMSA 1987.

### **FISCAL IMPLICATIONS**

The changes to the incentives for school improvement fund allow the PED to use the funds for the state improving schools program. But it is unclear what this program is or if a state improving schools program exists. The PED is able to retain 3 percent of the fund for administrative purposes.

### **SIGNIFICANT ISSUES**

Current federal statutes still mandate the adequate yearly progress program; however the U.S. Department of Education has granted waivers from certain provision of the No Child Left Behind act. New Mexico has been granted a waiver from calculating adequate yearly progress (AYP) and is instead required to calculate school grades for federal accountability purposes. However, the current waivers are effective only through the end of school year 2013-14; states will have to request an extension for future years if waivers are still available. Additionally, Congress is considering legislative proposals to revamp NCLB that may not align with requirements of the current flexibility waiver.

### **ADMINISTRATIVE IMPLICATIONS**

The PED will be required to report to the Legislative Education Study Committee on the department's proposed changes to law to comport with applicable federal requirements by the end of October 2014 and subsequent years.

### **TECHNICAL ISSUES**

Sections 22-1-1.2, 22-8E-6, 22-10A-14, 22-23B-6 NMSA 1978 still contains reference to "adequate yearly progress". Section 22-2C-10 NMSA 1978 still contains reference to "corrective action" that relates to the federal adequate yearly progress program, and Section 22-2C-12 NNSA 1978 is a six year pilot project that establishes a complementary accountability system based on student growth. These sections have been addressed in the SEC Amendment, including repeal of Section 22-2C-12 because the A-B-C-D-F Schools Rating Act established a

statewide accountability system based on growth.

## OTHER SUBSTANTIVE ISSUES

Concerns exist nationally that the issuance of waivers of significant requirements of the Elementary and Secondary Education Act (ESEA) by the Obama administration amounts to executive overreaching. Despite the concerns that exist about the adequate yearly progress (AYP) program, the administration's willingness to bypass Congress to enact its own education agenda raises serious legal and constitutional separation of powers issues. The No Child Left Behind Act still remains current law, and as such may not be dead.

### According to the Center on Education Policy

In September 2011, the Obama Administration initiated a program to grant states waivers of several significant requirements of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act (NCLB). The provisions that can be waived include several requirements of NCLB intended to hold schools accountable for raising student achievement, including the requirements for states to set annual student achievement targets that culminate in 100 percent of students scoring proficient in reading and mathematics by 2014, and to implement specific interventions in all schools and districts that fail to make adequate yearly progress (AYP) toward these targets for two consecutive years or more. **The current waivers are effective only through the end of school year 2013-14, however, and states will have to request an extension for future years.** A key question is whether progress in implementing redesigned accountability systems will come to a halt in the waiver states if a revamped Elementary and Secondary Education Act, or a new administration, introduces a different set of policies. Waiver states may devote considerable time and energy to implement accountability systems that are little more than interim measures, in effect for just a few years or less.

Under the waiver requirements developed by the U.S. Department of Education, states with waivers must identify three categories of schools based on their performance: Reward, Priority, and Focus schools. Reward schools are those with high performance or high levels of progress. Priority schools are among the lowest-performing schools in the state and must total at least 5 percent of the state's Title I schools; these schools must undergo comprehensive and intensive intervention to improve their performance that are aligned with several specific "turnaround principles" outlined in ED's waiver guidance. Focus schools have large achievement gaps between subgroups or have one or more low-performing subgroups, and must implement targeted interventions. A basic element of the accountability systems in waiver states is the mechanism they will use to place schools in these categories. Waiver states do not have to select schools that fail to make AYP, or even all schools that fail to meet the requirements of a state-specific accountability index, for improvement or other consequences. These policies are likely to have the effect of identifying fewer schools for interventions.

## ALTERNATIVES

Enact temporary provisions eliminating adequate yearly progress reporting.

RSG/blm