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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	<u>SEC</u>	<b>ORIGINAL DATE</b>	03/10/15	
		<b>LAST UPDATED</b>	03/20/15	<b>HB</b>
	Public Peace, Health, Safety & Welfare			
<b>SHORT TITLE</b>	<u>Standardized Test Participation Rates</u>	<b>SB</b>	<u>691/aSPAC</u>	
		<b>ANALYST</b>	<u>Gudgel</u>	

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	See Fiscal Implications			

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Education Department (PED)

### SUMMARY

#### Synopsis of SPAC Amendment

Senate Public Affairs Amendment for Senate Education Committee Substitute for Senate Bill 691 removes reference to “ninety-five percent”, prohibiting PED from requiring a participation rate for the purposes of evaluating teachers, public schools or school districts or any other purposes for the 2014-2015 and 2015-2016 school years. The amendment also removes reference to provisions in Section 2 and Section 3 that allow PED to use a PED-approved alternative measure acceptable to the school or district instead of a participation rate on any measure if the participation rate is too low.

#### Synopsis of Bill

Senate Education Committee Substitute for Senate Bill 691 enacts a new section of the Assessment and Accountability Act, the A-B-C-D-F Schools Rating Act, and the School Personnel Act to prohibit PED from requiring a participation rate of 95 percent for the purposes of evaluating teachers, public schools or school districts or any other purposes for the 2014-2015 and 2015-2016 school years.

### FISCAL IMPLICATIONS

PED’s analysis states the state could lose up to \$400 million in federal Title I funding if the state

fails to meet requirements agreed to in the federal flexibility waiver (ESEA waiver) granted by the U.S. Department of Education from certain provisions of the federal No Child Left Behind Act. LFC staff notes that the state does not receive \$400 million in federal Title I funding, but rather \$400 million in federal funds for public education from multiple federal grants. However, it is unclear what, if any, funds would be at risk if the state fails to meet the requirements of the ESEA waiver. LFC staff requested specific information from PED on February 28<sup>th</sup> related to the amount of funds the state receives per federal grant and statutory authority for potential loss of these funds; however, to date PED has not responded. In the past, PED staff indicated the only federal funds that would be at risk would be federal Title I funds.

Failing to comply with the waiver provisions will not automatically result in the state losing federal funds. The federal No Child Left Behind Act requires the state to administer assessments in basic skills to students at select grade levels and measure “adequate yearly progress” (AYP) toward increasing proficiency standards. The ESEA waiver allows the state to discontinue measuring AYP and use the state A through F school grading system in its place. If New Mexico does not comply with the ESEA waiver and all of the assurances made in the waiver, the state would have to return to measuring AYP to continue to receive federal funds.

Though returning to measuring AYP is widely considered returning to a failed accountability system, it is important to note that not all states have requested an ESEA waiver and these states are still receiving their Title I and other federal funds and measuring student academic outcomes pursuant to AYP.

It is important to note PED has indicated the ESEA waiver allowed the state to redirect approximately \$10 million in federal Title I funds based on the new grading system rather than distributing pursuant to adequate yearly progress (AYP), which was an ineffective system to be used as a basis for funding decisions (all schools would likely be considered failing under the system if the state was still measuring AYP). If the state loses the waiver, funds will have to be distributed based on the AYP system and supplemental education services would be reinstated.

## **SIGNIFICANT ISSUES**

The bill as amended prohibits PED from requiring a participation rate on student assessments, student or parent surveys or other measures employed in the grading system; PED, a public school, or school district from requiring a participation rate on student assessments, student or parent surveys or other measures in the educator evaluation system.

PED notes that under the adequate yearly progress (AYP) system previously required by the federal No Child Left Behind Act (NCLB), schools were required to ensure 95 percent of each subgroup of students enrolled in the school were required to successfully complete the assessment. Provisions in the school grading system, which apply to whole schools rather than every subgroup in the school, require continuation of the 95 percent participation rate. PED notes failure to meet the current 95 percent participation rate results in the lowering of a school’s grade by one letter grade and removal could jeopardize federal Title I funding.

The department also notes eliminating or reducing the participation rate might disproportionately affect students with disabilities. PED cites data from the National Center of Educational Outcomes that notes prior to NCLB only 60 percent of students with disabilities were included in state assessment programs in 2001 compared to 99 percent in 2002 pursuant to the provisions of

NCLB. PED's analysis also states that it has been documented that lower performing students have been withheld from high stakes assessments when the opportunity is provided.

PED notes the testing window is long enough to provide sufficient opportunities for students to make up missed tests and students with documented medical emergencies and students who qualify for the reading exemption are excused from the rate. The department also notes the methodology for calculating attendance is based on three separate snapshots of enrollment and three separate calculations – with PED using the calculation that most benefits the school or teacher. PED reports six schools in 2013 and 7 schools in 2014 did not meet the 95 percent participation rate.

### **ADMINISTRATIVE IMPLICATIONS**

PED will be required to establish an alternative measure where participation is not valid.

### **TECHNICAL ISSUES**

Subsection D on page 22 prohibits PED from requiring a participation rate for evaluating teachers, public schools, or school districts or for any other reason. Subsection D omits school administrators. The Legislature may want to consider amending this section to explicitly include school administrators.

RSG/aml/bb