

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1025 Student Retention

**SPONSOR(S):** Early Learning & Elementary Education Subcommittee, Skidmore

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 200

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Early Learning & Elementary Education Subcommittee	16 Y, 0 N, As CS	Bauman	Brink
2) PreK-12 Appropriations Subcommittee			
3) Education & Employment Committee			

### SUMMARY ANALYSIS

In recognition of the challenges presented by COVID-19 for student learning, the bill authorizes parents to request that their K-5 public school student be retained in the grade level to which the student was assigned at the beginning of the 2020-2021 school year for the 2021-2022 school year.

The bill provides that the retention request must specify the academic reasons for retention and be submitted in writing to the school principal. The principal must consider any request received by June 30, 2021. If a request is received after the deadline, it is within the principal's discretion whether to consider the request.

When considering a retention request, the school principal is required to inform the student's teachers, collaboratively discuss any basis for agreement or disagreement with the student's parent, and maintain documentation of the discussions. Parents must be informed that retention may impact a student's eligibility for participation in high school athletic activities due to age requirements. Ultimately, after discussion of the retention request, the parent's decision will determine whether the student is retained.

As an alternative to retention, the principal, teachers, and parent may develop a one-year education plan designed to help a student return to grade level readiness by the end of the following school year. The plan may include supplemental educational support, services, and interventions; summer education; promotion in some courses; and midyear promotion.

If a student retained under the bill has an individual education plan (IEP) in effect, the student's IEP team must meet to review and revise the student's IEP as appropriate.

The bill requires school districts to report the number of students retained by parental request for all or part of the 2021-2022 school year to the Department of Education by June 30, 2022.

The authority of a parent to request retention under the bill is limited to requests for the 2021-2022 school year.

This bill has an indeterminate fiscal impact. See Fiscal Comments.

The bill becomes effective upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Student Progression**

District school boards are required to establish a comprehensive plan for student progression from one grade to another based on the student's mastery of the Next Generation Sunshine State Standards (NGSSS), which establish the core content knowledge and skills that K-12 public school students are expected to acquire.<sup>1</sup> Among other requirements, the progression plan must:<sup>2</sup>

- Emphasize student reading proficiency in grades K-3 and provide targeted instructional support for students with identified deficiencies in English Language Arts (ELA), math, science, and social studies.
- Use the results of statewide, standardized assessments and end-of-course assessments to advise high school students of any identified deficiencies and to provide appropriate preparatory instruction.
- Provide for the timely delivery of student evaluation results to a student's teachers and parents for progress monitoring in grades K-12.
- Provide requirements and notification procedures for student participation in whole-grade promotion, midyear promotion,<sup>3</sup> or subject-matter acceleration.

#### Statewide, Standardized Assessments

The primary purpose of Florida's student assessment program is to provide student academic achievement and learning gains data to students, parents, and schools.<sup>4</sup> In addition to providing information for school accountability and policy development objectives, the program is also designed to:<sup>5</sup>

- Assess the achievement level and annual learning gains of each student in ELA and mathematics and the achievement level in all other subjects assessed.
- Identify the educational strengths and needs of students and the readiness of students to be promoted to the next grade level or to graduate from high school.<sup>6</sup>

The statewide, standardized assessment program is designed and implemented by the Commissioner of Education to align with the core curricular content established in the NGSSS.<sup>7</sup> Each public school student must participate in the statewide, standardized assessment program in grades 3 through 10.<sup>8</sup> Students who do not achieve a Level 3 or above on the statewide, standardized ELA assessment, the statewide, standardized Mathematics assessment, or the Algebra I end-of-course assessment must be evaluated to determine the nature of the student's difficulty, the areas of academic need, and strategies for providing academic supports to improve the student's performance.<sup>9</sup>

Any student in kindergarten through grade 3 who exhibits a substantial reading deficiency<sup>10</sup> must be provided interventions immediately following the identification of the substantial deficiency.<sup>11</sup> When a

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<sup>1</sup> See ss. 1003.41 and 1008.25(2), F.S. In particular, the plan must focus progression on a student's mastery of English Language Arts, math, science, and social studies standards.

<sup>2</sup> Section 1008.25(2), F.S.

<sup>3</sup> Midyear promotion means promotion of a retained student at any time during the year of retention once the student has demonstrated ability to read at grade level. Section 1008.25(5)(c)8., F.S.

<sup>4</sup> Section 1008.22(1), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Section 1008.22(3), F.S.

<sup>8</sup> Sections 1008.22(3)(a) and 1008.25(4)(a), F.S.

<sup>9</sup> Section 1008.25(4)(a), F.S.

<sup>10</sup> Identification of a substantial deficiency is based upon screening, diagnostic, progress monitoring, or assessment data; statewide assessments; or teacher observations. Section 1008.25(5)(a), F.S. See Rule 6A-6.053(12), F.A.C.

<sup>11</sup> Section 1008.25(5)(a), F.S.

student is identified with a substantial reading deficiency, Florida law requires the student's school to notify his or her parent.<sup>12</sup> The school must provide an explanation of the child's particular difficulty in reading as well as descriptions of the services available and proposed interventions designed to address the child's reading deficiency.<sup>13</sup> Additionally, the parent must be informed that if the student's substantial reading deficiency is not remediated by grade 3, the student must be retained unless a good cause exemption from retention<sup>14</sup> applies.<sup>15</sup>

### Students with Individual Education Plans

All students who are between the ages of 3 to 21 and have a disability<sup>16</sup> have the right to a free, appropriate public education (FAPE).<sup>17</sup> For each eligible student or child with a disability served by a school district, an individual education plan (IEP) or individual family support plan must be developed, reviewed, and revised.<sup>18</sup> The IEP is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a Florida student with a disability.<sup>19</sup>

In developing an IEP, the student's parent participates in the planning process with a multidisciplinary team<sup>20</sup> of school and district staff and other experts to consider a student's strengths and the unique academic, developmental, and functional needs of the child.<sup>21</sup> To facilitate the student's successful progression through school, a student's IEP includes statements of:<sup>22</sup>

- the student's academic and functional levels of performance;
- the goals, objectives, or benchmarks for the student;
- specially designed instruction and related services, including accommodations, modifications, or supports for the student to appropriately advance toward attaining annual goals; and
- how the student's progress toward meeting annual goals will be measured and how periodic progress reports will be provided.

Students with disabilities must be reevaluated at least once every three years to determine their continuing eligibility for special education and related services.<sup>23</sup> In addition, a student's parent or teacher may request an IEP team meeting or a reevaluation at any time.<sup>24</sup> There is no requirement that gifted students be reevaluated.<sup>25</sup>

### Student Retention

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<sup>12</sup> Section 1008.25(5)(c), F.S.

<sup>13</sup> Section 1008.25(5)(c)1.-3., F.S.

<sup>14</sup> See *infra* text accompanying notes 28-30.

<sup>15</sup> Section 1008.25(5)(c)4., F.S.

<sup>16</sup> Disabilities that qualify a student as an exceptional student include an intellectual disability; an autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; an other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; deafness, hard of hearing, or dual sensory impairment; or developmental delays from birth through 5 years old or if the student is hospitalized or homebound. Section 1003.01(3)(a), F.S.

<sup>17</sup> 20 U.S.C. s. 1412(a)(1); Section 1003.5716, F.S.

<sup>18</sup> Rule 6A-6.03028(3), F.A.C.

<sup>19</sup> Florida Department of Education, *Developing Quality Individual Education Plans* (2015), at 9, available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

<sup>20</sup> The IEP team is comprised of the student's parent(s), at least 1 regular education teacher of the student (if the student is or may be participating in the regular education environment), at least 1 special education teacher of the student, a representative of the local education agency, an individual who can interpret instructional implications of evaluation results (may be the teacher or agency representative), other individuals who have knowledge or special expertise of the student at the discretion of the parent or agency, and the student when appropriate. 20 U.S.C. s. 1414(d)(1)(B).

<sup>21</sup> See 20 U.S.C. s. 1414(d)(3)(A) and (B); Section 1003.5716, F.S.; Rule 6A-6.03028(3)(g), F.A.C.

<sup>22</sup> Rules 6A-6.03028(3)(h) and 6A-6.0331(9), F.A.C.

<sup>23</sup> Rule 6A-6.0331(7), F.A.C.

<sup>24</sup> Rule 6A-6.03028, F.A.C.

<sup>25</sup> See rule 6A-6.0331, F.A.C.

Florida law specifies that no student may be assigned to a grade level based solely on age or other factors that constitute social promotion.<sup>26</sup>

For promotion to grade 4, a student must score a Level 2 or higher on the statewide, standardized ELA assessment required for grade 3. The student must be retained if the student's reading deficiency is not remedied by the end of grade 3, which is demonstrated by scoring a Level 2 or higher on the statewide, standardized ELA assessment required for grade 3.<sup>27</sup>

The district school board may exempt students from mandatory retention in grade 3 only for good cause.<sup>28</sup> Good cause exemptions are limited to students in grade 3 and may apply to students with limited English proficiency; students with disabilities; students who demonstrate an acceptable level of performance on an alternative assessment approved by the State Board of Education or through a student portfolio; and students previously retained in grades K-3.<sup>29</sup> Any student who is promoted to grade 4 with a good cause exemption must be provided intensive reading instruction and intervention, including specialized diagnostic information and specific reading strategies for the particular student's needs.<sup>30</sup>

In the 2018-2019 school year, 28,178 students were promoted to grade 4 based on a good cause exemption.<sup>31</sup>

Based on data from the Florida Department of Education (DOE),<sup>32</sup> there was an overall 57 percent reduction in statewide K-5 student retention rates for the 2019-20 school year compared to the previous 5-year average. Students in grade 3 had the most significant reduction in retention rates, with a 77 percent reduction in the 2019-20 school year compared to the previous 5-year average.<sup>33</sup>

The retention of a student may impact the student's eligibility for participation in interscholastic athletics in high school. The Florida High School Athletic Association (FHSAA), the statutorily designated governing nonprofit for interscholastic athletics in Florida's public schools,<sup>34</sup> is authorized to determine student-athlete eligibility requirements.<sup>35</sup> In January 2021, in response to eligibility issues caused by student retention, the FHSAA amended its bylaw governing high school ineligibility based on age.<sup>36</sup> Beginning with the 2021-2022 school year, students who turn age 19 prior to July 1 are ineligible to participate in high school interscholastic athletics.<sup>37</sup>

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<sup>26</sup> Section 1008.25(6)(a), F.S.

<sup>27</sup> Section 1008.25(5)(b), F.S.

<sup>28</sup> Section 1008.25(6)(b), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Florida Department of Education, *3rd Grade Promotions: Good Cause Exemption 2018-19*, Excel Report, available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.stml> (last visited March 29, 2021) (scroll to "Retentions and Non-Promotions" at the bottom of the page). Pursuant to the Florida Department of Education's Emergency Order No. 2020-EO-01, spring K-12 statewide assessment test administrations—including the grade 3 ELA assessment—for the 2019-20 school year were canceled. Therefore, grade 3 good cause exemption promotion data is not available for the 2019-20 school year. See Florida Department of Education, *Emergency Order No. 2020-EO-01* (March 23, 2020) available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf> (last visited March 29, 2021).

<sup>32</sup> House staff analysis of the DOE's retention data. Florida Department of Education, *Retention Rates by District 2019-20*, Excel Report, available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.stml> (last visited March 29, 2021); Florida Department of Education, *Retention Rates by District 2014-15 to 2018-19*, Excel Reports, available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.stml> (last visited March 29, 2021) (retention reports for the following school years: 2014-15; 2015-16; 2016-17; 2017-18; and 2018-19).

<sup>33</sup> *Id.*

<sup>34</sup> Section 1006.20(1), F.S.

<sup>35</sup> Sections 1006.20(2)(a) and (7), F.S.

<sup>36</sup> J.C. Carnahan, *FHSAA adjusts cutoff date for high school athletes turning 19*, Orlando Sentinel, Jan. 25, 2021, <https://www.orlandosentinel.com/sports/highschool/os-sp-hs-fhsaa-sports-20210125-ufhfskrgzbgfxotj6krvdmwlm-story.html> (FHSAA's Representative Assembly voted to amend the bylaws and relax the birthday cut off from September 1 to July 1).

<sup>37</sup> *Id.* Students may appeal an eligibility determination by the FHSAA, including determinations made based on age. See FHSAA, Bylaw 10.6, available at [https://fhsaa.com/documents/2020/10/1/2021\\_handbook\\_website\\_1001.pdf?id=292](https://fhsaa.com/documents/2020/10/1/2021_handbook_website_1001.pdf?id=292).

## COVID-19 Public Health Emergency

In response to the COVID-19 emergency, the DOE issued an Emergency Order canceling the remaining K-12 state assessments for the 2019-2020 school year.<sup>38</sup> The order also authorized school districts and other educational entities to evaluate students for promotion, graduation, and final course grades for the 2019-2020 school year without consideration of the assessments that were canceled.<sup>39</sup>

Given the cancellation of the statewide, standardized ELA assessment, the DOE advised that grade 3 student promotion decisions for the 2019-2020 school year should be made in consultation with parents, teachers, and school leaders based on the student's classroom performance and progress monitoring data.<sup>40</sup> Recognizing the important role parents play in planning their students' educations, the DOE guidance also specified that parents should have the ability to request retention of their child in the current grade for the 2020-2021 year.<sup>41</sup> The guidance provided that the decision about retention should be made in consultation by parents, teachers, and school leaders about what is in the best interest of the child.<sup>42</sup>

### **Effect of Proposed Changes**

The bill authorizes parents to request that their K-5 public school student be retained in the grade level to which the student was assigned at the beginning of the 2020-2021 school year for the 2021-2022 school year.

The bill provides that the retention request must specify the academic reasons for retention and be submitted in writing to the school principal. The principal must consider any request received by June 30, 2021. If a request is received after the deadline, it is within the principal's discretion whether to consider the request.

When considering a retention request, the school principal is required to inform the student's teachers, collaboratively discuss any basis for agreement or disagreement with the student's parent, and maintain documentation of the discussions. Parents must be informed that retention may impact a student's eligibility for participation in high school athletic activities due to age restrictions. Ultimately, after discussion of the retention request, the parent's decision will determine whether the student is retained.

As an alternative to retention, the principal, teachers, and parent may develop a customized one-year education plan designed to help a student return to grade level readiness by the end of the following school year. The plan may include supplemental educational support, services, and interventions; summer education; promotion in some courses; and midyear promotion.

If a retained student has an IEP in effect, the student's IEP team must meet to review and revise the student's IEP, as appropriate.

The bill requires school districts to report the number of students retained by parental request for all or part of the 2021-2022 school year to the DOE by June 30, 2022. This appears to require reporting of parent-requested retentions that occur after the start of the 2021-2022 school year.

The authority of a parent to request retention under the bill is limited to requests for the 2021-2022 school year.

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<sup>38</sup> Florida Department of Education, *Emergency Order No. 2020-EO-01* (March 23, 2020), at 3-4, available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf>.

<sup>39</sup> See *id.* at 3; see also Florida Department of Education, *Coronavirus (COVID-19): K-12 Public, Private & Charter Schools, Assessments, Accountability and Promotion*, <http://www.fldoe.org/em-response/schools.stml> (last visited March 29, 2021).

<sup>40</sup> Florida Department of Education, *Q&A Guidance*, at Question 4, available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/FDOE-COVID-QAI.pdf> (last visited March 29, 2021).

<sup>41</sup> *Id.* at Question 5.

<sup>42</sup> *Id.*

**B. SECTION DIRECTORY:**

**Section 1.** Authorizes a parent or guardian to request that his or her K-5 student be retained in a grade level for academic reasons for a specified school year; requires that such a request be submitted in a specified manner; requires school principals to consider such requests if they are timely received; authorizes school principals to consider requests that are not timely received; requiring a school principal to have certain discussions with specified parties; requires that the principal disclose certain impacts of student retention with the student's parent or guardian; requires such discussions be documented; authorizing alternatives to a student's retention; specifies that the parent's or guardian's decision regarding retention controls; requires that the individual education plan (IEP) team for a retained student review and revise the student's IEP, as appropriate; requires school districts to report certain data to the Department of Education by a specified date

**Section 2.** Provides an effective date of coming into effect upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill has no impact on state revenues or expenditures for fiscal year 2021-2022. However, to the extent the bill increases student retention, it could affect the number of full-time equivalent (FTE; measuring student enrollment) projected for funding as students may remain in the public K-12 system longer.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 1, 2021, the Early Learning and Elementary Education Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. In addition to the provisions of the underlying bill granting a parent authority to request a retention for the 2021-2022 school year and establishing reporting requirements for school districts, the amendment:

- Restricts parental retention requests to students in grades K-5 and requires specific academic reasons.
- Specifies that the written request is submitted to the school principal and requires the school principal to consider requests received by June 30, 2021. Requests received after the deadline are considered at the principal's discretion.
- Provides a process for the principal's consideration of a retention request, which must include informing the student's teachers, collaborative discussions with the student's parent, and documenting the discussions. Parents must also be informed that retention may impact a student's eligibility in high school athletics.
- Provides that the principal, teachers, and parent may develop a one-year education plan designed to return the student to grade level readiness by the end of the following school year, as an alternative to retaining the student.
- Establishes that the parent's decision will ultimately determine whether a student is retained.
- Provides that if a student with an IEP in effect is retained, the student's IEP team must revise the IEP as needed.

The analysis is drafted to the bill as amended by the Early Learning and Elementary Education Subcommittee.