

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Education Pre-K - 12 Committee

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BILL: SB 332

INTRODUCER: Senator Wilson

SUBJECT: Public School Student Progression

DATE: February 6, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	<b>Pre-meeting</b>
2.	_____	_____	EA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The bill eliminates mandatory retention requirements for students in grade 3, the good cause exemptions from mandatory retention, and midyear promotion. The bill also:

- Allows students to be retained by the district school board upon request of a parent, beginning with the 2007-2008 school year;
- Provides procedures for parental requests for retention;
- Provides for parents to appeal the decision of a district school superintendent to retain or promote a student;
- Requires parents of all students to be notified when a student's reading deficiency has not been remedied at the end of the student's grade level;
- Revises the requirements for remedial reading instruction and intervention strategies; and
- Eliminates the requirements for allocating school district remedial and supplemental instruction resources for students who are deficient in reading by the end of grade 3 and for students who fail to meet the performance levels required for promotion.

The bill requires the State Board of Education (SBE) to adopt rules and to begin the rulemaking process no later than 10 days after the effective date of the act.

This bill substantially amends the following sections of the Florida Statutes: 1002.20, 1002.23, and 1008.25.

## II. Present Situation:

### *Federal Law and Academic Accountability*

Federal law sets forth specific testing requirements for public school students.<sup>1</sup> The requirements are designed to improve student achievement and close academic achievement gaps among subgroups of students. The Florida Department of Education is required to adopt challenging academic content standards and challenging student academic achievement standards.<sup>2</sup> The state is required to apply the same academic standards to all schools and children in the state. Subjects to be covered by these standards must include at least mathematics, reading or language arts, and science.<sup>3</sup>

As part of this program, the law also requires states to implement student academic assessments in mathematics, reading/language arts, and (beginning in 2007-2008) science. These tests must be used as the primary means of determining the yearly performance of the state, the school districts, and schools in meeting the federal goals.<sup>4</sup> By law, the tests must be aligned to the state's academic content standards.<sup>5</sup> For Florida, this means that the testing instrument used for purposes of meeting the federal requirements must be aligned to the Sunshine State Standards.

While federal law requires student assessment, it does not require states to establish high stakes tests for students. Testing that is performed pursuant to federal law is used to measure whether states and schools are making "adequate yearly progress" toward state student proficiency goals under the federal requirements.<sup>6</sup> According to a 2004 Senate Committee Interim Project, six states<sup>7</sup> administered a high-stakes test to elementary school students and eleven states did not.<sup>8</sup> Waivers or appeals were generally offered to elementary school students who fail the high stakes exam.<sup>9</sup>

### *Florida Statewide Assessment System*

Current law provides that school performance grade designations ("A," "B," "C," "D," and "F") are based upon a combination of student achievement scores, student learning gains (as measured by annual Florida Comprehensive Assessment Test (FCAT) assessments in grades 3 through 10), and improvement of the lowest 25th percentile of students in the school in reading, math, or writing on the FCAT, unless these students are demonstrating satisfactory performance.

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<sup>1</sup> Part A of Title I of the Elementary and Secondary Education Act (Title I), as reauthorized by the No Child Left Behind Act of 2001 (NCLB), P.L. 107-110. To receive federal funds under Part A, states must comply with these requirements.

<sup>2</sup> 20 U.S.C. s. 6311.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

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

<sup>6</sup> The definition of "adequate yearly progress" varies by state and is established by the state's educational agency within the parameters of NCLB's requirements. The determination of adequate yearly progress must be based on academic assessments (testing). See 20 U.S.C. s. 6311(b).

<sup>7</sup> Delaware, Georgia, Louisiana, Mississippi, North Carolina, and Texas.

<sup>8</sup> Alabama, Arkansas, California, Kentucky, Maryland, New York, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia.

<sup>9</sup> *FCAT Impact on Pupil Progression and High School Graduation, Interim Project Report 2004-129*, February 2004, based on a survey of California, New York, and states that are members of the Southern Regional Education Board (SREB).

The FCAT is comprised of two components. A criterion-referenced test measures the student’s achievement of benchmarks in reading, writing, science, and mathematics in accordance with the Sunshine State Standards. The second component is a norm-referenced test that measures the student’s performance against national norms.

Florida currently requires public school students in grades 3 through 10 to take the reading and math portions of the FCAT annually. Students in grades 4, 8, and 10 must also take the writing portion of the FCAT and students in grades 5, 8, and 11 must take the science portion of the FCAT. Florida administrative rule requires the FCAT to be administered to students in grades 3 through 9 no less than once a year on a schedule approved by the Commissioner of Education and up to three times each year for students who do not attain minimum performance expectations on the 10th grade FCAT.<sup>10</sup>

FCAT scores are grouped into five levels, with Level 1 as the lowest level and Level 5 as the highest, as shown in the following chart:<sup>11</sup>

FCAT Achievement Levels	
Level 5	Performance at this level indicates that the student has success with the most challenging content of the Sunshine State Standards. A Level 5 student answers most of the test questions correctly, including the most challenging questions.
Level 4	Performance at this level indicates that the student has success with the challenging content of the Sunshine State Standards. A Level 4 student answers most of the questions correctly but may have only some success with questions that reflect the most challenging content.
Level 3	Performance at this level indicates that the student has partial success with the challenging content of the Sunshine State Standards but performance is inconsistent. A Level 3 student answers many of the questions correctly but is generally less successful with questions that are most challenging.
Level 2	Performance at this level indicates that the student has limited success with the challenging content of the Sunshine State Standards.
Level 1	Performance at this level indicates that the student has little success with the challenging content of the Sunshine State Standards.

***Third Grade Retention***

Current state law prohibits the promotion of students based on age or other factors that constitute social promotion.<sup>12</sup> Students may not be promoted to grade 4 unless they score at Level 2 or higher on the reading portion of the grade 3 FCAT.<sup>13</sup> The district school board may only exempt 3rd grade students from mandatory retention for good cause. There are six good cause exemptions to retention:

- Students with limited English proficiency (LEP) who have less than two years of instruction in an English for Speakers of Other Languages (ESOL) program.
- Students with disabilities for whom participation in the statewide assessment program is not appropriate.

<sup>10</sup> Rule 6A-1.09422, F.A.C.

<sup>11</sup> *Consolidated State Application Accountability Workbook for State Grants Under NCLB*, Florida Department of Education, March 24, 2006.

<sup>12</sup> Section 1008.25, F.S.

<sup>13</sup> *Id.*

- Students who demonstrate an acceptable level of performance on an alternative standardized reading assessment.<sup>14</sup>
- Students who demonstrate, through a student portfolio, that they are reading on grade level, based on mastery of the Sunshine State Standards.
- Students with disabilities who were previously retained in grades K-3.
- Students who were previously retained in grades K-3 for a total of two or more years.

District school boards must establish comprehensive programs for student progress. The SBE is responsible for enforcing provisions of law on student progression.<sup>15</sup> To minimize poor FCAT performance and remediate retained students, schools must take specific action, including the following:

- Notifying parents of students who fail to meet academic expectations about these deficiencies, the steps the school is taking to correct them, and the potential consequences of poor academic performance;
- Developing a progress monitoring plan for students;
- Providing instructional and support services for students with reading deficiencies;
- Providing information about alternative assessments and district criteria for mid-year promotion;
- Notifying parents of students who are retained and provide the reasons why the student did not qualify for a good cause exemption, as well as identify strategies the parents can use to help their children succeed;
- Providing parents with at least one additional option to help their child succeed, which may include after-hours tutoring, a “Read at Home” plan, or a specialized reading tutor; and
- Completing a student portfolio for each child with a progress monitoring plan, which the district reviews if the student is retained.

Retained students must be given the opportunity to participate in the district’s summer reading camp. During the second year of third grade, the student is to be taught by a high-performing teacher. Students repeating third grade must receive intensive interventions in reading, including 90 uninterrupted minutes of research-based reading instruction daily. After re-evaluation, students who have made sufficient progress may be promoted mid-year to fourth grade.

***Review by the Office of Program Policy Analysis and Government Accountability (OPPAGA)***

OPPAGA evaluated the FCAT performance of students affected by Florida’s third grade retention policy during the 2002-03 and 2003-04 school years and followed their performance through the 2004-05 school year.<sup>16</sup> The OPPAGA report noted the following:

- The retention policy increased the number of students who repeat third grade after scoring at Level 1 on the FCAT. However, the subsequent performance of these students also has improved. Sixty-two percent of the students who repeated third grade because

<sup>14</sup> Students who score at Level 1 can be promoted by scoring at or above the 51st percentile on the grade 3 norm-referenced test portion of the FCAT or a parallel form of the SAT-9, under Rule 6A-1.094221, F.A.C.

<sup>15</sup> Section 1008.25, F.S.

<sup>16</sup> *Third Grade Retention Policy Leading to Better Student Performance Statewide, Report No. 06-66*, OPPAGA, October 2006.

- they scored at Level 1 on the FCAT subsequently improved their performance to Level 2 or above. About two-thirds of these students maintained their improved performance into fourth grade.
- Many students scoring at Level 1 are promoted for one of six statutorily defined “good cause” exemptions. The subsequent performance of these students is generally lower than that of retained Level 1 students.<sup>17</sup>
  - The DOE data is not sufficient to determine the basis or timing for all Level 1 promotions to fourth grade. However, the data quality improved from the first to the second year of the policy. The department is addressing some of the remaining problems.
  - The effectiveness of school responses to the policy varied. Schools that were more successful at improving the performance of third grade repeaters appeared to set higher academic expectations for all students and show stronger instructional leadership.
  - A substantial proportion of third grade students who scored Level 1 on the FCAT were subsequently promoted to fourth grade without a reported good cause exemption. Due to this high rate of non-reporting, OPPAGA was unable to determine if the exemptions were effectively or consistently implemented by school districts.

The OPPAGA report recommended that DOE review districts’ reported data to ensure it is complete and accurate and collect sufficient information to determine the timing and rationale for the promotion of Level 1 third graders to fourth grade.

### III. Effect of Proposed Changes:

The bill eliminates mandatory retention requirements for students in grade 3, the good cause exemptions from mandatory retention, and midyear promotion. While the bill eliminates the good cause exemptions for students with disabilities, it does not affect other provisions of law that specify a process for reviewing all decisions affecting these students.<sup>18</sup>

Students may be retained by the district school board according to a specific process, beginning with the 2007-2008 school year. Parents of all students must be notified when a student’s reading deficiency has not been remedied at the end of the student’s grade level. According to the bill, the retention of any student, including a student who does not score at Level 2 or higher on the grade 3 FCAT, may presumably be initiated only at the request of a parent. After reviewing the parent’s request and a teacher’s recommendation, the principal decides whether to promote or retain the student. However, promotion decisions are subject to review by the district school superintendent. The superintendent makes the final decision to promote or retain the student and a parent may appeal the decision to the district school board.

The bill revises the requirements for remedial reading instruction and intervention strategies. Specifically, the bill expands the responsibilities for school districts. Districts must meet the following requirements:

<sup>17</sup> In 2002-03, districts promoted over a third (34 percent) of Level 1 students to fourth grade using a good cause exemption. This percentage grew to 43 percent in 2003-04. The most frequently reported good cause was for a student with a disability who had already been retained once.

<sup>18</sup> 20 U.S.C. ss. 1413 and 1415 and 34 C.F.R. § 300.500 et seq., relating to the Individuals with Disabilities Education Act (IDEA); s. 1003.57, F.S.; and Rule 6A-6.03311(11), F.A.C.

- Review progress monitoring plans for students who did not score above Level 1 on the reading FCAT and require portfolios;
- Provide all students with intensive instructional services and support, and
- Provide a high-performing teacher and additional instructional options to all students with substantial reading deficiencies.

Currently, some of these strategies are only required for students who are retained in third grade.

Although the bill allows students to be retained, it eliminates specific strategies for retained students. For example, midyear promotion policies and placement in transitional instruction will not be required for students who are retained.

The bill eliminates the priorities for allocating school district remedial and supplemental instruction resources for students who are deficient in reading by the end of grade 3 and for students who fail to meet the performance levels required for promotion. The bill revises the purpose of the READ initiative to eliminate the prevention of retention.

The bill also makes conforming changes relating to district reporting requirements, student and parental rights, and the Family and School Partnership for Student Achievement Act. The bill requires SBE rules. The rulemaking process must be initiated no later than 10 days after the effective date of the act.

The effective date of the bill is upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

The bill eliminates the priority for remedial and supplemental resources. According to the DOE, this relates to the supplemental academic instruction (SAI) categorical funds for students who are deficient in reading.<sup>19</sup> These funds are allocated each year in the General Appropriations Act (GAA), which specifies the priorities for spending. The DOE notes that it is unclear whether or not the elimination of the spending priorities in the bill will result in a redirection of funds from reading programs, since districts will have more flexibility in distributing SAI funds. For Fiscal Year 2006-2007, the GAA provides \$707,826,199 for SAI and the first priority is supplemental intensive instruction, including summer school and intensive English immersion instruction, for students in grades 3 and 10 who scored Level 1 in reading or math.<sup>20</sup>

**VI. Technical Deficiencies:**

The bill revises school district responsibilities for students. On page 9, line 6, the bill should be amended to clarify that the new requirements must be met beginning with the 2007-2008 school year, rather than the 2004-2005 school year. The parental notification requirements (page 10, line 5) are ambiguous. The bill does not specify the proficiency level that the student has failed to meet. On page 7, line 17, the bill provides procedures for handling written requests for retention. On lines 29-30, the bill requires the principal to review a parent's request for retention. It is unclear as to whether any party other than a parent may request retention and if the procedures in the bill apply only to parental requests.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>19</sup> Section 1011.62(1)(f), F.S., establishes this categorical fund that may be used by districts for strategies to improve student achievement.

<sup>20</sup> Specific Appropriation 91, Ch. 2006-25, L.O.F.





## **VIII. Summary of Amendments:**

None.

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