

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL 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: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 200

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; Senator Berman and others

SUBJECT: Student Retention

DATE: April 21, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jahnke</u>	<u>Bouck</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Underhill</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Underhill</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 200 authorizes a parent or guardian to request that his or her K-5 public school student be retained, for academic reasons, for the 2021-2022 school year, in the grade level to which the student was assigned at the beginning of the 2020-21 school year. Specifically, the bill:

- Requires parents or guardians to submit a retention request in writing to the school principal by June 30, 2021;
- Requires the principal to consider the retention request if timely filed;
- Requires that the principal inform the student's teacher and to collaboratively discuss the request with the parent or guardian;
- Requires the principal to disclose that the requested retention could impact the student's eligibility to participate in high school interscholastic sports due to the student's age;
- Allows, in lieu of retention, the development of an education plan with the intent of helping the student return to grade level readiness;
- Allows the parent or guardian to have the final decision regarding the promotion or retention of the student;
- Requires that for a student retained by request with an IEP in effect, the student's IEP team must convene to review and revise the student's IEP, as appropriate; and
- Requires school districts to report to the Department of Education the number of retained students under this act.

The bill has no impact on state revenues or expenditures.

The bill takes effect upon becoming a law.

## II. Present Situation:

### **Student Progression**

Each district school board must establish a plan for student progression from one grade to another based on the student's mastery of the Next Generation Sunshine State Standards.<sup>1</sup> The plan must, among other things:

- Emphasize student reading proficiency in grades K-3 and provide targeted instructional support for students with identified deficiencies.
- Use 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 timely information to a student's teacher and parent evaluation results of progress monitoring in grades K-12.
- Provide requirements and notification procedures regarding student participation in whole-grade promotion, midyear promotion<sup>2</sup>, or subject-matter acceleration.<sup>3</sup>

### *Statewide Standardized Assessments*

The primary purpose of the student assessment program is to provide student academic achievement and learning gains data to students, parents, and schools. The program is designed to, in part:

- Assess the achievement level and annual learning gains of each student in English Language Arts 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>4</sup>

Each student must participate in the statewide, standardized assessment program in grades 3 through 10.<sup>5</sup> Students who do not achieve a Level 3 or above on the statewide, standardized English Language Arts (ELA) assessment, the statewide, standardized Mathematics assessment, or the Algebra I EOC 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>6</sup>

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<sup>1</sup> Sections 1003.41 and 1008.25, F.S. The plan must focus specifically on ELA, math, science, and social studies standards.

<sup>2</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>3</sup> Section 1008.25(2), F.S.

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

<sup>5</sup> Sections 1008.22, F.S and 1008.25(4)(a), F.S.

<sup>6</sup> Section 1008.25(4)(a), F.S.

Any student in grades K-3 who exhibits a substantial deficiency<sup>7</sup> in reading must be provided interventions immediately following the identification of the reading deficiency.<sup>8</sup>

### ***Student Retention***

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>9</sup>

To be promoted 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, by scoring a Level 2 or higher on the statewide, standardized assessment required for grade 3.<sup>10</sup>

The district school board may only exempt students from mandatory retention in grade 3 for good cause. A student who is promoted to grade 4 with a good cause exemption must be provided intensive reading instruction and intervention. Good cause exemptions are limited to students in grade 3 and relate to limited English proficiency students, students with disabilities, the use of alternative assessments or portfolios, and students previously retained in grades K-3.<sup>11</sup>

In the 2018-2019 school year, 28,436 students were promoted to grade 4 based on a good cause exemption.<sup>12</sup>

Based on data from the Florida Department of Education (DOE),<sup>13</sup> there was an overall 43 percent reduction in statewide K-12 student retention rates for the 2019-20 school year compared to the previous 5-year average. The reduction in statewide K-8 retention rates for the same period was 50 percent. Students in grade 3 had the most significant reduction in retention rates, with a 77 percent reduction in grade 3 student retentions in 2019-20 compared to the previous 5-year average. See table below for a breakdown of the data provided from the DOE.

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<sup>7</sup> Determination 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. School districts are required determine the criteria used by the district to identify K-3 students with a substantial deficiency in reading. Fla. Admin. Code R. 6A-10.053(9)(c)3.

<sup>8</sup> Section 1008.25(5)(a), F.S.

<sup>9</sup> Section 1008.25(6)(a), F.S.

<sup>10</sup> Section 1008.25(5)(b), F.S.

<sup>11</sup> Section 1008.25(6)(b), F.S.

<sup>12</sup> Pursuant to Florida Department of Education Emergency (DOE) Order No. 2020-EO-01, spring K-12 statewide assessment test administrations for the 2019-20 school year were canceled. DOE, *Emergency Order No. 2020-EO-01, March 23, 2020* available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf>. Therefore, 3rd grade good cause exemption data are not available for the 2019-20 school year. Florida Department of Education, *3rd Grade Promotions: Good Cause Exemption 2018-19* available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.stml>, and DOE, *3rd Grade Promotions: Good Cause Exemption 2014-15 to 2017-18* available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.stml> (last visited Jan. 27, 2021).

<sup>13</sup> Senate staff analysis of DOE, *Retention Rates by District 2019-20* available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.stml>, and DOE, *Retention Rates by District 2014-15 to 2018-19* available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.stml> (last visited Jan. 27, 2021).

Grade	Total Retained 5-year Average 2014-15 to 2018-19	Percent Retained 5-year Average 2014-15 to 2018-19	Total Retained 2019-20	Percent Retained 2019-20	Percent Reduction in Retained Students 2014-19 to 2019-20
K	6,894	3.40%	4,710	2.33%	32%
1	7,647	3.63%	4,830	2.34%	37%
2	4,941	2.31%	2,862	1.38%	42%
3	16,841	7.55%	3,805	1.74%	77%
4	2,289	1.06%	669	0.32%	71%
5	1,464	0.68%	521	0.24%	64%
6	2,621	1.25%	1,719	0.77%	34%
7	3,525	1.70%	2,370	1.09%	33%
8	5,445	2.61%	4,260	1.94%	22%
9	7,714	3.60%	4,670	2.14%	39%
10	8,776	4.21%	6,115	2.89%	30%
11	7,852	4.06%	4,651	2.36%	41%
12	11,351	5.83%	8,270	4.08%	27%
<b>Total</b>	<b>87,360</b>	<b>3.21%</b>	<b>49,452</b>	<b>1.80%</b>	<b>43%</b>

**Exceptional Student Education**

The Individuals with Disabilities Education Act (IDEA) requires school districts to make free appropriate public education (FAPE) available to such students ages three through 21.<sup>14</sup> A FAPE must include special education and related services<sup>15</sup> provided by the public school district at no cost to the parent, which meet the standards of the state and are in conformity with the student’s Individualized Education Plan (IEP).<sup>16</sup> An IEP must be developed, reviewed, and revised for each eligible student or child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements.<sup>17</sup>

The student’s IEP Team<sup>18</sup> is required to review the student’s IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved. The IEP team must respond to the parent’s right to ask for a revision to the IEP, and to revise the IEP, as appropriate, to address any lack of progress toward annual goals or consider anticipated needs.<sup>19</sup>

<sup>14</sup> 20 U.S.C. s. 1400(d)(1)(A); 34 C.F.R. s. 300.101; Rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.

<sup>15</sup> “Related services” means “transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes.” “Related services” also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34(a).

<sup>16</sup> 34 C.F.R. s. 300.17; Rule 6A-6.03411(1)(p), F.A.C. An individualized education plan means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the IDEA. 20 U.S.C. s. 1414(d).

<sup>17</sup> Rule 6A-03028(3), F.A.C.

<sup>18</sup> The membership of the IEP Team is specified in Rule 6A-6.03028(3)(c), F.A.C.

<sup>19</sup> Rule 6A-6.03028(3)(j), F.A.C.

## COVID-19 Public Health Emergency

In response to the COVID-19 emergency, the DOE issued an Executive Order (EO),<sup>20</sup> which cancelled remaining K-12 state assessments for the 2019-2020 school year.<sup>21</sup> The EO 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 cancelled.<sup>22</sup>

Resulting state guidance relating to the cancellation of state assessments specified that, because the Grade 3 ELA FSA was a key component districts used to make promotion decisions, and such data would not be available due to the cancellation of statewide assessments for the 2019-2020 school year, promotion decisions should be made in consultation with parents, teachers, and school leaders based on the students' classroom performance and progress monitoring data. The 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>23</sup>

### III. Effect of Proposed Changes:

The bill authorizes a parent or guardian to request that his or her K-5 public school student be retained, for the 2021-2022 school year, in the grade level to which the student was assigned at the beginning of the 2020-21 school year.

A parent or guardian who wishes for his or her student to be retained must submit a retention request in writing to the school principal, specifying the academic reason for the retention. Only retention requests received by the principal on or before June 30, 2021, must be considered. A principal may consider a request received after that date at his or her discretion.

The principal is required to inform the student's teacher and collaboratively discuss the request with the parent or guardian. As part of the discussion with the parent or guardian, the principal must disclose that the requested retention could impact the student's eligibility to participate in high school interscholastic sports due to the student's age.

In lieu of retention, a customized education plan may be developed for the student to return to grade level readiness by the end of the next academic year. Such plan may include, but is not limited to, supplemental educational support, services, and interventions; summer education; promotion in some, but not all, courses; and midyear promotion.

The parent or guardian has the final decision whether to retain the student and must sign a form provided by the principal indicating the parent or guardian's decision and acknowledging the

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<sup>20</sup> 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>.

<sup>21</sup> *Id.*, Section 4. Assessment, Accountability and Promotion, March 23, 2020 available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf>.

<sup>22</sup> 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 Jan. 27, 2021).

<sup>23</sup> DOE, *Q&A Guidance*, <http://www.fldoe.org/core/fileparse.php/19861/urlt/FDOE-COVID-QAI.pdf> at p. 2.

academic and athletic ramifications of their decision. This form must be retained in the student's record.

For a student retained by request with an IEP in effect, the student's IEP team must convene to review and revise the student's IEP, as appropriate.

School districts are required to report to the Department of Education the number of students retained pursuant to this act for all or part of the 2021-2022 school year.

The bill may likely provide parents with greater authority to determine that their child should be retained in the 2021-2022 school year. However, this authority is granted only for the 2021-2022 school year, unless extended by legislative action.

The bill takes effect 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.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

CS/CS/SB 200 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 FTE projected for funding as students may remain in the public K-12 system longer.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill creates an unnumbered section of Florida Law.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Appropriations on April 19, 2021:**

The committee substitute:

- Adds that in addition to a parent, a guardian may also make a retention request.
- Revises the grades from K-8 to K-5, for which a parent can request that their student be retained.
- Changes the request from being automatically granted by the superintendent to being a request that shall be considered by the school principal in consultation with the teachers.
- Adds that the submitted request must specify the academic reason for the retention.
- Adds a provision that in lieu of retention, the principal in consultation with the teacher and parent or guardian may develop an education plan for the student to return to grade level readiness by the end of the next academic year.
- As part of the discussion with the parent or guardian, the principal shall disclose that retention may impact the student's eligibility to participate in high school interscholastic or intrascholastic sports due to the student's age.
- Retains the provision that the parent has final determination if their child is retained.
- The parent or guardian must sign a form provided by the principal indicating the parent or guardian's decision and acknowledging the academic and athletic ramifications of their decision. This form must be retained in the student's record.
- Adds that if the student is retained, the student's IEP team must convene to review and revise the student's IEP, as appropriate.
- Removes the prohibition that a student retained does not qualify for a midyear promotion.

**CS by Education on February 3, 2021:**

The committee substitute:

- Limits the retention request eligibility for K-8 students, rather than K-12 students.
- Modifies the request deadline from June 1, 2021 to June 30, 2021.
- Removes the requirement in the bill for school districts to administer midyear and annual statewide assessments to students retained under this act.
- Removes the option of midyear promotion eligibility for students retained under this act.
- Modifies from June 1, 2022 to June 30, 2022, the school district reporting date to the Department of Education.
- Omits the repeal of the act on June 30, 2022; however the act is created only within Florida Law.

**B. Amendments:**

None.