

## **BILL ANALYSIS**

C.S.H.B. 136  
By: Olivo  
Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current law, Texas bases the retention or promotion of 3<sup>rd</sup>, 5<sup>th</sup> and 8<sup>th</sup> grade students on performance on the Texas Assessment of Knowledge and Skills (TAKS). One single exam does not provide an accurate assessment of a student's education. Studies have shown that policies, curriculum and instruction geared primarily to secure high test scores do not provide a well-rounded education for our students or an accurate measurement of overall student performance. When used in isolation, tests have unwarranted high-stakes consequences on student promotion or retention.

This bill provides for multiple criteria assessment for student promotion. The bill sets up a system to consider student's grades, portfolios or work samples, overall academic record and class rank, scores on other individual assessments, teacher's evaluations, plus TAKS scores, and any extenuating circumstances that might have affected a student's performance on TAKS tests when deciding whether a student is promoted or retained in grade. The bill places the decision making for academic advancement in the hands of those who know the child best, that is, their teachers, principals and parents. The bill also allows Texas to use TAKS scores for all parts of the accountability system.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Education in SECTION 1 of this bill.

### **ANALYSIS**

Note: Unless otherwise specified, statutory references in this Bill Analysis are to the Education Code.

The bill provides that the first time a student fails to perform satisfactorily on an assessment instrument under Subsection (a) of Section 28.0211, the school district shall provide a second opportunity to take the assessment instrument. Before the instrument is administered a second time, the district must establish a grade placement committee to prescribe the accelerated instruction that must be provided to the student, and must establish an educational plan for the student, in accordance with criteria specified in the bill.

The bill specifies the composition of the grade placement committee, and includes notice requirements regarding the convening and purpose of the committee.

The bill also imposes certain notification requirements to a student's parent or guardian with respect to: a student's failure to perform satisfactorily on an assessment instrument; the accelerated instruction program; the educational plan; the opportunity for retaking the assessment instrument; and the possibility that the student may be retained at the same grade level for a second failure to perform satisfactorily on the assessment instrument.

The bill provides that if a student fails to perform satisfactorily on an assessment instrument a second time, the grade placement committee shall determine whether the student should be promoted. The grade placement committee may promote the student if the committee determines that the student has demonstrated an overall competency in the essential knowledge and skills of the student's grade level. If the grade placement committee determines that the student should not be promoted, the grade placement committee shall provide the student with an

opportunity to take the assessment instrument a third time. If the student's parent or guardian declines the opportunity for the student to take the assessment instrument a third time or if the student takes the assessment instrument a third time and fails to perform satisfactorily on the assessment instrument, the student may not be promoted to the next grade level unless the grade placement committee determines that the student has demonstrated an overall competency in the essential knowledge and skills of the student's grade level. A student may not be retained on the basis of the grade placement committee's decision unless that decision is unanimous. The Commissioner of Education by rule shall establish a time line for making the placement determination. The bill provides that the above provisions do not create a property interest in promotion.

The bill provides that, in determining whether a student has demonstrated an overall competency in the essential knowledge and skills of the student's grade level the grade placement committee shall consider certain factors as specified in the bill.

The bill provides that a school district shall provide to a student who, after two attempts, has failed to perform satisfactorily on an assessment instrument accelerated instruction during the next school year as prescribed by the educational plan developed for the student by the student's grade placement committee. The district shall provide that accelerated instruction regardless of whether the student has been promoted or retained. During the school year, the student shall be monitored to ensure that the student is progressing in accordance with the educational plan developed for the student. The district shall administer to the student the assessment instrument for the grade level in which the student is placed at the time the district regularly administers the assessment instruments for that school year.

The bill provides that if at any point during the school year a teacher determines that a student who is required to take an assessment instrument is not performing at grade level, the teacher shall notify the student's parent or guardian in writing and by telephone and request a conference with the parent or guardian. The teacher must request the conference not later than the 30th day before the first day on which the assessment instrument is administered to the student.

The bill provides that Sections 28.0211(b), (d), and (e), Education Code, are repealed.

The bill provides that the Act applies beginning with the 2007-2008 school year.

### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The original and the substitute both address the mechanism for promoting students who fail to perform satisfactorily on certain specified assessment instruments under Section 28.0211. However, the original and substitute take very different approaches in this regard, and there are numerous differences in the text of the two bills. In the interest of clarity, the provisions of the original are set forth below in detail.

The original bill provided a school district shall establish a grade placement committee to determine whether to promote or retain a student who fails to perform satisfactorily on an assessment instrument. The original specifies the composition of the committee, which is different from the composition specified in the substitute. The original includes specific notification requirements to a student's parent or guardian of the student's failure to perform satisfactorily, the convening and purpose of the committee, and the possibility that the student might be retained at the same grade level for the next school year. The original provides that the grade placement committee may decide to promote a student who fails to perform satisfactorily on an assessment instrument if the committee concludes, using standards adopted by the board of trustees, that if promoted and given accelerated instruction the student is likely to perform at grade level. The original provides a list of the standards the board of trustees may adopt. The original provides that if the committee decides not to promote a student, the committee shall prescribe accelerated instruction for the student for the remainder of the school year and may

prescribe accelerated instruction for the time school is recessed for the summer. The original provides that an accelerated instruction group administered by a school district under this section may not have a ratio of more than 10 students for each teacher, and must include reading instruction for a student who fails to perform satisfactorily on a reading assessment instrument. The original provides that the committee may decide in favor of a student's promotion after a student has received accelerated instruction if the committee concludes, using the same standards adopted by the board of trustees, that if promoted and given accelerated instruction, the student is likely to perform at grade level. The original provides that a student may not be retained on the basis of the grade placement committee's decision unless that decision is unanimous, and that the commissioner by rule shall establish a time line for making the placement determination.

The original provides that a student who fails to perform satisfactorily on an assessment instrument and is not promoted by the committee shall be retained at the same grade level for the next school year. The student's parent or guardian may appeal the student's retention by submitting a request to the committee to reconsider its decision. The school district shall give the parent or guardian written notice of the opportunity to appeal. Such provisions do not create a property interest in promotion.

The original provides that a school district shall provide to a student who has failed to perform satisfactorily on an assessment instrument accelerated instruction during the next school year as prescribed by an educational plan developed for the student by the student's committee . The district shall provide that accelerated instruction regardless of whether the student has been promoted or retained. The educational plan must be designed to enable the student to perform at the appropriate grade level by the conclusion of the school year. During the school year, the student shall be monitored to ensure that the student is progressing in accordance with the plan. The district shall administer to the student the assessment instrument for the grade level in which the student is placed at the time the district regularly administers the assessment instruments for that school year.

As noted above, the substitute takes an approach that is different in numerous ways from the original. The only way to clearly explain all the differences between the two bills is to describe the process that occurs under the original bill, and then to describe the process that occurs under the substitute. In the interest of brevity, the process that occurs under the substitute, which is described in detail in the ANALYSIS section above, is hereby incorporated by reference into the this COMPARISON OF ORIGINAL TO SUBSTITUTE section.

In addition, the substitute bill repeals Sections 28.0211(d) and (e). The original amends these subsections.