

# SENATE BILL REPORT

## SB 5237

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As Reported by Senate Committee On:  
Early Learning & K-12 Education, February 6, 2013  
Ways & Means, February 20, 2013

**Title:** An act relating to establishing accountability for student performance in third grade.

**Brief Description:** Establishing accountability for student performance in third grade.

**Sponsors:** Senators Dammeier, Litzow, Rivers, Tom, Fain, Hobbs, Hatfield and Carrell.

**Brief History:**

**Committee Activity:** Early Learning & K-12 Education: 1/30/13, 2/06/13 [DPS-WM, DNP, w/oRec].  
Ways & Means: 2/12/13, 2/20/13 [DP2S].

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### SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

**Majority Report:** That Substitute Senate Bill No. 5237 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Litzow, Chair; Dammeier, Vice Chair; Brown, Fain, Hill and Rivers.

**Minority Report:** Do not pass.

Signed by Senators McAuliffe, Ranking Member; Rolfes, Assistant Ranking Member; Billig and Cleveland.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Mullet.

**Staff:** Susan Mielke (786-7422)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5237 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Hargrove, Ranking Member; Nelson, Assistant Ranking Member; Bailey, Becker, Braun, Dammeier, Fraser, Hatfield, Hewitt, Keiser, Kohl-Welles, Murray, Padden, Parlette, Ranker, Rivers, Schoesler and Tom.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Elise Greef (786-7708)

**Background:** The Early Childhood Education and Assistance Program (ECEAP). ECEAP is a state-funded pre-kindergarten program serving three and four-year-old children from low-income families, families with children who qualify for special education regardless of income, and families not income eligible but impacted by development or environmental risk factors. According to the Department of Early Learning (DEL) in the 2011-12 school year, ECEAP funding was \$6,812 per child. Washington is serving 50.4 percent of the ECEAP-eligible children. Approximately 18,990 children were eligible for ECEAP and were not served by either ECEAP or the federal Head Start program. In January 2012, the ECEAP waiting list held 1360 four-year-olds and 1987 three-year-olds.

Professional Development. From 1993 to 2010, the Legislature provided funding for some form of learning improvement days (LIDs). In 2007 LIDs were put into statute as targeted professional development. Both the statute and appropriations act provided that LIDs are not part of the definition of basic education.

Student Report Cards. Currently there are no state requirements regarding what information is included on a student report card.

Statewide Third Grade Reading Assessments. Generally, third grade reading skills are assessed using the state's Measurements of Student Progress (MSP) assessment; unless the student has a disability and is not appropriately assessed by the MSP then the state uses an alternate assessment. A student's performance on the MSP is reported for individual students, schools, districts, and the state according to four performance levels defined by the Washington State Board of Education (SBE):

- Level 4: Advanced – exceeding state standard.
- Level 3: Proficient – meeting state standard.
- Level 2: Basic – not meeting state standard.
- Level 1: Below Basic – not meeting state standard.

The state report card on the website of the Office of Superintendent of Public Instruction (OSPI), indicates that 68.8 percent of Washington students in third grade met or exceeded the state standard on the reading MSP in the 2011-12 school year; 31.2 percent did not meet the state standard.

Recently, Washington revised its student learning standards in reading, writing, and mathematics, which are tested on the MSP, to align with the Common Core State Standards (CCSS). The CCSS are student learning standards in English language arts (ELA) and mathematics that were developed by a multistate consortium.

Washington is participating in a multistate consortium using a federal grant to develop new student assessments that are, among other things, aligned with the CCSS. The assessments will include a third grade ELA assessment. The assessments will be ready to implement in the 2014-15 school year. To continue in the consortium after the beginning of the 2014-15 school year, Washington must agree to use the consortium-developed tests to meet the accountability requirements of the federal No Child Left Behind Act, also known as the reauthorization of the Elementary and Secondary Education Act.

Learning Assistance Program (LAP). LAP is Washington's state-funded program that provides additional academic support to eligible students including those that are achieving below grade level on the state's assessment, and 11th and 12th grade students at risk of not graduating. LAP funds may be used to support programs in grades K-12 in reading, writing, mathematics, and readiness for those subjects. LAP falls within the definition of basic education.

**Summary of Bill (Recommended Second Substitute):** ECEAP. Subject to funds being appropriated, DEL must expand ECEAP to serve more children in the 2013-15 biennium.

Professional Development. Targeted, research-based professional development in reading instruction for K-3 teachers is authorized, subject to funds being appropriated. OSPI must create partnerships with the educational service districts or public and private institutions of higher education with approved educator preparation programs to deliver the professional development.

Student Report Cards. Each school district must require that each report card of every student in grades K-4 includes information regarding how the student is progressing in reading skills and whether the student is on grade level. If the student is not on or above grade level then the teacher must explain to the parent or guardian what interventions will be used to help the student improve. The teacher must also provide strategies for the parents to assist the student to improve reading skills at home.

Statewide Third Grade Reading Assessments. Each school must report to the school district the number of students in grades K-3 that are reading below grade level and the interventions being provided. The school district must then report the information to OSPI. Beginning in the 2015-16 school year, if students receive a score of below basic on the third grade assessment in reading, the teachers, parent or guardian, and principal must meet to discuss appropriate placement and intervention. The options include retaining the student in the third grade or promoting the student to fourth grade with an intensive summer program to improve reading skills. An alternative summer program may include a program approved by the school district, that may include a contracted program. At the end of the summer reading program, the student is retested and a second meeting is convened for the teacher, parents, and principal. English language learner students or certain special education students may be exempt from these requirements. Beginning in the 2016-17 school year, a district must provide intensive remediation for any student who did not meet the state standard on the third grade reading assessment in the previous school year.

LAP. LAP funds must focus first on addressing the needs of students in grades K-3 who are deficient in reading or reading-readiness skills. LAP outreach activities must focus on these students. Beginning June 1, 2013, school district LAP reporting requirements include annual entrance and exit data, the amount of academic growth gained by each student, and the specific programs and practices used. OSPI must compile the data and report annual and longitudinal gains for the programs used to show which are most effective.

Implementation of the provisions of the bill regarding student retention, summer reading programs, and reading remediation requirements is subject to the availability of funds appropriated specifically for the purpose.

**EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute):**

- The intent section amended to include LAP and basic education;
- adds that LAP must first focus on reading and reading-readiness skills for students in grades K-3 with reading deficits, and that LAP outreach must first focus on the same group of participating students;
- adds LAP reporting requirements; and
- revises required interventions for students not meeting state standard on English language arts or reading assessments. The revised process includes meetings of teachers, parents or guardians, and principals to select an option for students with a reading deficiency in third grade, which may retain the student in third grade or promote the student to fourth grade with an intensive summer reading program, which may be a contracted program approved by the school district. At the end of summer program, the student must be re-tested and a second meeting convened.

Implementation of the provisions of the bill regarding student retention, summer reading programs, and reading remediation requirements is subject to the availability of funds appropriated specifically for the purpose.

**EFFECT OF CHANGES MADE BY EARLY LEARNING & K-12 EDUCATION COMMITTEE (Recommended First Substitute):** A requirement is added, subject to funds being appropriated, for DEL to expand ECEAP to serve more children in the 2013-15 biennium. Targeted, research-based professional development for K-3 teachers, subject to funds being appropriated is added. OSPI must create partnerships with the educational service districts or public and private institutions of higher education with approved educator preparation programs to deliver the professional development.

A requirement is added that each school district must require that each report card of every student in K-4 grades includes information regarding how the student is progressing in reading skills and whether the student is on grade level. If the student is not on or above grade level then the teacher must explain to the parent or guardian what interventions will be used to help the student improve. Each school must report to the school district the number of students in grades K-3 that are reading below grade level and the interventions being provided. The school district must then report to OSPI.

Starting in 2015-16, instead of 2014-15, a student who scores below basic on the ELA assessment will be automatically enrolled in an intensive summer school program provided by the school district. At the end of the summer the student retakes the assessment. A parent or guardian can opt their student out of the summer school program. If at the end of the summer school program, the student does not meet the state standard on the ELA assessment then in the 2015-16 school year, school districts must provide the remediation specified in the bill to the student in fourth grade. If in the 2016-17 school year the fourth grade student does not meet the state standard on the ELA assessment and the student has participated in the

intensive summer school program and the remediation provided in the fourth grade then the student may not be promoted to the fifth grade, unless the student meets one of the good cause exemptions provided in the bill. The school district must provide the specified remediation to the retained student.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Early Learning & K-12 Education):** PRO: We have an achievement and opportunity gap that has persisted for decades. At some point we must do something differently. Students need to be able to read by the third grade; it is a great predictor of success, and the lack of being able to read is connected to the prison pipeline. This legislation is based on Florida law but 14 other states have done this. They have had tremendous success in improving students' academic performance. This is not an attack on teachers – it is giving teachers the tools to help them make their students successful. A bright line around third grade reading is important for communities to choose to support education.

CON: The intent of getting all kids to read at grade level is a laudable goal. But not all children learn at the same rate and that doesn't mean they won't learn it. The MSP is not a complete picture of the student and you need to look at the whole child when making such decisions. Research shows that any improvements that might be gained from retention are very short lived and that retention will lower graduation rates. These decisions should be made at the local level with teachers and parents. Olympia should not be telling schools how to do their jobs and overburden the system. The coalition of communities of color have concerns about the ramification of the bill. The effect is that students of color will be disproportionately retained. There are better ways to use our time and resources. It would be better to focus and build on the early learning structure with early prevention and intervention before children get to school. It would be better to provide teachers with more training to more effectively teach reading. It would be better to invest in our schools and teachers and to involve families. Instead of retaining students you can better help them through an intensive summer program or an extended day program. This bill provides no new money – more unfunded mandates are not what we need. We have the most crowded classrooms in the nation; we should lower class size so teachers can help struggling students.

OTHER: We appreciate that you are putting a laser-like focus on third grade reading. But there needs to be greater internal supports, the problem is much more profound than that students are slipping through the cracks. We need to use the Washington Kindergarten Inventory of Developing Skills and screen students twice a year so we can address what they need. Teachers need to use evidence-based literacy instruction that is phonemically based. Teachers and administrators need to be trained to use data responsibly. The state should provide a statewide early learning program.

**Persons Testifying (Early Learning & K-12 Education):** PRO: Senator Dammeier, prime sponsor; Dave Powell, Stand for Children; Frank Ordway, League of Education Voters.

CON: Randy Dorn, State Superintendent of Public Instruction; Anita Boyum, Ellensburg School Director; Sharonne Navas, Equity in Education Coalition; Edri Gieger, Vancouver School District Director; Erin Jones, Federal Way School District; Dawn Mason, Parents for Student Success; John Deeder, Evergreen Public Schools; Wendy Rader-Konofalski, WA Education Assn.; Tim Fries, Elementary School Principals of WA; Ron Sisson, Elementary School Principals of WA.

OTHER: Ramona Hattendorff, WA State PTA; Ben Rarick, SBE.

**Staff Summary of Public Testimony (Ways & Means) as Heard in Committee:** PRO: We have had long-term, persistent achievement and opportunity gaps in our state that disproportionately affect students of color. The gap is persistent across grade levels, subjects, and time frames. This bill says there comes a point when we have to stop that. The focus is early reading because there is ample evidence that reading on grade level, entering fourth grade, is pivotal to success in school. The bill says we have to focus resources and interventions in those early years, pre-K to grade four, to make sure students have the foundation that will enable them to be successful in the rest of their schooling and ultimately, in life. This bill will be expensive. But the cost of not doing it, of allowing the opportunity gap to persist, and of allowing students of color to have lagging graduation rates and not be successful, exceeds the cost of the bill. Costs of downstream interventions outweigh the cost of preventive investments up front. This is the right thing to do and, although it might not be one of the enhancements already identified in HB 2261 or 2776, there is no doubt that when the Supreme Court talks about basic education, this is basic education. The earlier we start, the better. When students who are unable to read at grade level are moved along past third grade, those students have a lot of subsequent academic problems that we wind up paying for. We pay for it in the form of remediation, special education, and college remediation. The broader economy is also paying – whether through high school drop-out rates, lost opportunities, lower tax bases, or other social long-term impacts. A group of high school seniors is supportive of the menu of interventions, have concerns about retention, would encourage maximum flexibility for school districts, and believe the funding is key.

CON: Investment made in children from pre-K through early grades is very important and would be consistent with HB 2261 and the *McCleary* decision. However, there is no funding in this bill above current funding. The bill references the use of Title I federal funds but, even if such funds were available, the fiscal notes says, federal regulations prohibit the use of federal funds for state required purposes. Current funds are being used elsewhere now and reprogramming them would underfund existing programs. Grade retention is an expensive approach. The requirements could derail and take focus off districts' own plans that have been put in place at the local level. There have not been conclusive studies to show this is effective long-term. Forcing students to repeat all lessons – even those that were successfully completed – is not an efficient way to address the problem.

OTHER: To confine remarks to the fiscal impact, we request that several sections be amended to include language that makes them subject to funds appropriated for this purpose. Many of the costs will not be seen until the biennium after next and this would ensure that

school districts would not be required to implement expensive new programs before the funding is available to pay for them. Some of the required intervention and remediation in the bill can be beneficial and all school districts would like to be able to provide these resources to students in the very early grades. If the bill goes forward, the funding needs to be there to be sure that the programs work. We remain concerned about holding students back and whether punishing them for not being successful is the right approach.

**Persons Testifying (Ways & Means):** PRO: Senator Dammeier, prime sponsor; Dave Powell, Stand for Children; Carolyn Logue, Oroville High School.

CON: Wendy Rader-Konofalski, WA Education Assn.; Patty Wood, Kelso School District.

OTHER: Marie Sullivan, WA State School Directors' Assn.; Dan Steele, WA Assn. of School Administrators.