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BILL ANALYSIS

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Senate Bill 328 (Substitute S-1 as passed by the Senate)  
Senate Bill 329 (Substitute S-2 as passed by the Senate)  
Senate Bill 330 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator Bill Hardiman (S.B. 328)  
Senator Nancy Cassis (S.B. 329)  
Senator Wayne Kuipers (S.B. 330)  
Committee: Education

Date Completed: 2-8-06

### **RATIONALE**

Michigan reportedly exceeds the national average in the percentage of students who require special education services because of learning disabilities. Some people believe that establishing an early intervention program aimed at providing learning and behavioral support to pupils in kindergarten through third grade would help to reduce the need for special education placements, by identifying and addressing learning difficulties toward the beginning of a child's education. Some have suggested that school districts and intermediate school districts (ISDs) should be authorized to fund the program through the use of revenue from the settlement of *Durant, et al. v State of Michigan*. In that case, the Michigan Supreme Court found that the State had unconstitutionally cut funding to school districts. (For a description of *Durant*, please see **BACKGROUND**.) Resulting legislation authorized settlement payments to plaintiff districts as well as payments to districts that were not plaintiffs in the case if they waived their right to bring similar complaints. Many districts continue to receive *Durant* settlement payments from the State. Currently, under the State School Aid Act, *Durant* payments may be used only for textbooks, educational materials, technology, infrastructure, debt service on pre-existing bonds, and other limited purposes.

### **CONTENT**

**The bills would amend the State School Aid Act to create an "Early Intervening**

**Program" to provide additional behavioral and learning assistance to pupils from kindergarten through third grade.**

**Senate Bill 328 (S-1) would allow settlement money from the *Durant, et al. v State of Michigan* lawsuit to be used to fund the Early Intervening Program.**

**Senate Bill 329 (S-2) would allocate \$1.0 million from the School Aid Fund in 2005-2006 to be used for grants to develop a model Program, and authorize funds formerly appropriated for reduction of class size to be used to fund the Program.**

**Senate Bill 330 (S-2) would authorize funds designated for at-risk students to be used for the Early Intervening Program.**

### **Senate Bill 328 (S-1)**

The bill would permit districts or intermediate districts that receive payments from the *Durant et al. v State of Michigan* settlement to use those funds for the Early Intervening Program. Currently, *Durant* funds paid to a local school district or intermediate school district (ISD) may be used only for textbooks, electronic instructional material, software, technology, infrastructure or infrastructure improvements, school buses, school security, training for technology, or the

payment of debt service on voter-approved bonds issued by the district or intermediate district. An ISD also may use *Durant* funds for other nonrecurring instructional expenditures, including expenditures for vocational education; acquisition of technology for academic support services; or projects conducted for the benefit of the ISD's constituent districts at the discretion of the ISD board. The bill would include the Early Intervening Program as a permissible use of *Durant* money for local school districts and ISDs.

Under the bill, the Program would have to do either or both of the activities described below.

It would have to monitor individual learning for pupils in kindergarten through third grade and provide specific support or learning strategies to those pupils as early as possible to reduce the need for special education placement. The Program would have to include literacy and numeracy supports, sensory motor skill development, behavior supports, instructional consultation for teachers, and the development of a parent/school learning plan.

Alternatively or as well, the Program would have to provide early intervening strategies for pupils in kindergarten through third grade, using school-wide systems of academic and behavioral supports. The strategies would have to be scientifically research-based and include at least pupil performance indicators based upon response to intervention, instructional consultation for teachers, and ongoing progress monitoring.

### **Senate Bill 329 (S-2)**

From the money appropriated under the State School Aid Act to public schools for the 2005-06 fiscal year, the bill would allocate \$1.0 million from the State School Aid Fund appropriation for 2005-2006 to the Department of Education for grants to districts under the bill. The payments could be made pursuant to an agreement with the Department.

Up to 75% of the money allocated under the bill would have to be used for grants to districts for the first year of a five-year grant program to develop a model Early Intervening Program for kindergarten through third grade. The Program would

instruct classroom teachers and support staff on how to monitor individual pupil learning and how to provide specific support or learning strategies to pupils as early as possible to reduce the need for special education placement. The Program would include literacy and numeracy supports, sensory motor skill development, behavior supports, instructional consultation for teachers, and the development of a parent/school learning plan.

Each site funded by a grant would have to serve as either a model site of practice, or a site of improvement. A model site would serve as an ongoing model that provided the Program for pupils and conducted professional development on-site for personnel visiting from a site of improvement. A site of improvement would be a site that sought to implement the Early Intervening Program.

The grants would have to be distributed through a competitive process established by the Department. The selection of grant recipients would have to be based on the ability to serve as a model site of practice or, for a site of improvement, on a demonstrated need to improve opportunities for learning success as reflected by a combined percentage of pupils who were learning disabled, emotionally impaired, or speech and language impaired, that was higher than the statewide percentage of those pupils, as determined by the Department. The Department would have to ensure geographic diversity in awarding grants.

The Department would have to award up to 18 grants of \$40,000 each, with not more than three for the development of model sites of practice and not more than 15 for sites of improvement. A model site would have to use the grant funds for professional development on how to make the Program available on-site to personnel from sites of improvement. A site of improvement would have to use the grant funds to pay for the expenses of obtaining this professional development and other expenses related to implementing an Early Intervening Program. The grants could be used for Early Intervening Programs for pupils at the elementary level only.

Up to 25% of the money allocated under the bill would have to be used for grants to

districts for scientifically research-based programs that provided early intervening strategies for pupils in kindergarten through third grade, using school-wide systems of academic and behavioral supports. The strategies would have to include, at least, pupil performance indicators based upon response to intervention, instructional consultation with teachers, and ongoing progress monitoring. The grants would have to be distributed through a competitive process established by the Department. A grant could be used for providing these programs for pupils at the elementary level only.

The bill would require the Department, by January 30 of the next fiscal year, to prepare and submit to the Governor and the Senate and House standing Committees on Education and the Appropriations subcommittees having jurisdiction over State School Aid an annual report of outcomes achieved by the grant recipients funded under the bill for a fiscal year. The funded sites would have to collect data prescribed by the Department and report to the Department on the percentage of pupils reading at grade level before and after the implementation of the Program, as measured by the statewide third-grade English language arts assessment.

Also, the bill would allow districts receiving extra State aid under former Section 32e of the Act to use those funds for an Early Intervening Program, in addition to reducing and maintaining small class size. (Under Section 32e, until it was repealed in 2002, eligible districts received funds to maintain and establish small classes in grades K-3. Under the Act, districts that had received Section 32e funds have the amount of those funds added to their foundation allowances to use in reducing class size.)

The bill is tie-barred to the following bills:

- Senate Bill 73 (Public Act 57 of 2005), which established a start date for emissions offsets eligible to be applied to a permit to install a process or process equipment that emits or might emit an air contaminant.
- Senate Bill 92, which would provide tax credits for early stage investments in certain technology-based ventures.
- Senate Bills 221 and 222, which propose tax credits for the placement of cellular towers in rural areas.
- Senate Bill 223, which proposes tax credits for food processing companies that train apprentices.
- Senate Bill 224, which would establish a minimum percentage of broadband loans for rural areas.
- Senate Bill 225 (Public Act 46 of 2005), which created the Agricultural Tourism Zoning Advisory Commission.
- Senate Bill 226 (Public Act 47 of 2005), which created the Agricultural and Rural Communities Advisory Council.
- Senate Bill 227, which would authorize the State Treasurer to invest surplus funds for facilitating qualified agricultural energy production loans.
- Senate Bill 228, which would create the "Rural Agricultural Recruitment Act" to establish a loan repayment program for educational loans to agricultural employees in rural areas.
- Senate Bill 246, which would create the "Educational Funding Guarantee Law" to establish a minimum level of funding for K-16 education.
- Senate Bill 251, which would provide a tax exemption for methane digesters and other thermal decomposing systems used in agricultural operations.
- Senate Bill 298, which would allow certain technology-based businesses to apply for a tax exemption from fees for additional authorized shares.
- Senate Bill 353, which would establish a minimum percentage of Community Development Block Grant program funds for projects in rural areas.
- Senate Bills 354, 355, and 399, which would enact the Clean Corporate Citizens program in the Department of Environmental Quality.
- Senate Bill 356 and 419 (Public Acts 191 and 190 of 2005), which regulate private, investor-owned wastewater utilities.
- Senate Bill 357, which would provide a tax credit for railroad track maintenance.
- Senate Bill 358, which would create the "Life Science Investment Authority Act".
- Senate Bill 359 (Public Act 213 of 2005), which requires the Michigan Strategic Fund to establish a Michigan Life Sciences Pipeline.
- Senate Bills 387 and 393, which would provide tax credits for certain workers' higher educational expenses.

- Senate Bill 398, which would require the Natural Resources Commission to submit a plan to promote multistate recreational opportunities.
- Senate Bill 415, which would provide for the interstate sharing of snowmobile-related convictions.
- House Bill 4342 (Public Act 221 of 2005), which increases the single business tax deduction for employers' health care-related expenses, phasing out health care expenses from the tax base.

### **Senate Bill 330 (S-2)**

The bill would allow eligible school districts and public school academies (PSAs) currently receiving at-risk funding under Section 31a of the Act to use those funds to implement and operate Early Intervening Programs.

(Under Section 31a, up to \$314,200,000 from the money appropriated to public schools from the State School Aid Fund is allocated in 2005-2006 for payments of at-risk allowances to eligible districts and eligible PSAs. The amount of the allowances must be based on the number of pupils in the district or academy who met the income eligibility criteria for free breakfast, lunch, or milk in the previous State fiscal year.)

MCL 388.1611f (S.B. 328)  
 388.1620 et al. (S.B. 329)  
 388.1631a (S.B. 330)

### **BACKGROUND**

In 1980, Donald Durant, a resident of the Fitzgerald School District in Warren, Michigan, filed suit against the State on behalf of seven taxpayers in the district and the Fitzgerald School District. The suit alleged that the State had failed to maintain proper funding to the school district. The plaintiffs argued that the Headlee amendment to the State Constitution prohibited the State from cutting education funding to the district.

In 1979, the State had changed the way it calculated and distributed education funds to districts, in an effort to make funding levels more equitable across the State. The Headlee amendment had been approved by the voters in 1978, as the result of a ballot initiative drive organized by Richard Headlee. The amendment states, among

other things, that the State may not reduce its portion of the funding of any programs or services mandated by State law. Specifically, under Article IX, Section 29 of the State Constitution, "The state is hereby prohibited from reducing the state financed portion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature...of units of Local Government, unless a state appropriation is made and disbursed to pay...for any necessary increased costs." In *Durant, et al v State of Michigan*, the plaintiffs argued that education was an activity required by State law, and the new school funding formula violated the Headlee amendment by reducing State funding below the established levels in fiscal year (FY) 1978-79, when the amendment had been enacted.

By the time the Michigan Supreme Court issued an opinion in the case on July 31, 1997, 82 other school districts and one ISD had joined the Fitzgerald School District as plaintiffs. In its ruling, the Court determined that "education" was a broad and indefinite concept that could not be considered an activity or service itself. Therefore, general funding for education was not protected under the Headlee amendment. The Court concluded, however, that specific identifiable programs that were required by State statute or regulations, such as special education, did fall under the protection of the Headlee amendment. Therefore, funding for the programs in question could not drop below the level that was paid in 1978-79.

In November 1997, the Legislature enacted Public Acts 142, 143, and 144 in response to the ruling. Among other things, the Acts authorized the payment of \$212.0 million to the plaintiff districts and made supplementary appropriations to the School Aid Fund for FY 1997-89 to comply with the funding levels required under *Durant*. In addition, Public Act 144 authorized the payment of funds to districts that were not plaintiffs in the case if they waived the right to bring similar charges against the State.

Subsequent lawsuits, known as *Durant II*, *Durant III*, and *Adair*, alleged continuing and new violations of the Headlee amendment,

as well as violations of Article IX, Section 11 of the State Constitution (part of Proposal A approved by the voters in 1994), which guarantees per-pupil school funding of at least the FY 1994-95 level. In general, the Michigan Court of Appeals and Supreme Court sided with the State except on the *Durant II* claim that the State violated Article IX, Section 11 by using foundation allowance payments to satisfy special education funding obligations. (The result of the *Durant II* decision was a restructuring of the State School Aid Act to establish three principal payments: guaranteed foundation allowance funding at 1994-95 levels for all pupils; guaranteed special education funding at Headlee percentages; and a "discretionary" payment.)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The State's education system does not do enough to identify and help students showing early signs of learning difficulties. Unnoticed, the problems can be compounded as the children experience greater difficulties in successive grades until they are finally placed in the special education program. The Early Intervening Program would provide teachers with the tools to identify potential problems quickly, and would help teachers find alternative ways of presenting material to children who have difficulties. By helping children early on, the Program would prevent small learning difficulties from becoming large barriers that keep children from succeeding in school, and would enable children who otherwise would be shifted into special education programs to progress along with the rest of the class. The Early Intervening Program would boost students' self-esteem by showing them that they were able to participate and understand the material, and by avoiding the stigma sometimes associated with special education classes.

Since a child's early learning years are critically important, the bills focus on identifying any learning difficulties from kindergarten to third grade, rather than waiting until the problems are magnified and the children are directed into special education. The bills would allow schools to

make better use of their resources by identifying problems and preventing the children from ever needing to go to special education.

### **Supporting Argument**

The proposed Early Intervening Program would require additional funding to be effective. Senate Bill 246, to which Senate Bill 329 (S-2) is tie-barred, would increase education funding by at least the same rate as inflation, helping to ensure that the Program was adequately funded. Senate Bill 329 (S-2) also is tie-barred to 26 bills aimed at stimulating the economy, since economic growth would generate more revenue for the State, providing additional funding for education. Backed by stronger economic growth and adequate funding levels for education, the Early Intervening Program would have the resources necessary to help children overcome learning differences.

### **Opposing Argument**

The bills would draw money away from other programs that are already underfunded. Senate Bill 328 (S-1) would allow *Durant* settlement payments to be diverted for the Early Intervening Program. That money currently is used for textbooks, technology, and other vital purposes. Senate Bill 329 (S-2) would allow money now used to maintain small class sizes in early grades to be used for this Program instead. Senate Bill 330 (S-2) would allow funds to be diverted from programs for at-risk students (such as those who are victims of child abuse or neglect; are below grade level in English or math; are pregnant or are teenage parents; or are eligible for free or reduced-price lunch). Although the Early Intervening Program could benefit some children with early learning or behavioral difficulties, the Program would be new and unproven, and it should not be funded at the expense of these other important, established programs. To be successful, this Program would require additional funding, rather than money shifted from existing programs.

**Response:** The State now takes what is essentially a reactive approach to helping children. The bills would take a preventive approach, making more efficient use of the limited funds available by enabling schools to correct small learning problems before they are compounded, and helping children stay out of expensive special education programs. Moreover, using *Durant* or other

funds for the Early Intervening Program would be at the discretion of the school district.

(11.5% of \$7,055) per eligible pupil for at-risk uses.

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## **FISCAL IMPACT**

### **Senate Bill 328 (S-1)**

The bill would have no fiscal impact on the State. The bill would allow funds received from the *Durant* case to be used for the costs associated with an Early Intervening Program, in addition to the uses currently permitted. As a result, local and intermediate school districts would have less *Durant* funds available for the present uses if they chose to use these funds to implement an Early Intervening Program.

### **Senate Bill 329 (S-2)**

The bill would result in an increased cost to the State of \$1.0 million to fund grants in this program. Also, the Department of Education would see increased costs related to the requirement of preparing and submitting an annual report of outcomes achieved by the grant recipients funded under proposed Section 34, as well as costs related to establishing the competitive grant process outlined in the section. Each district awarded a grant under this program would see increased revenue of \$40,000.

### **Senate Bill 330 (S-2)**

The bill would have no fiscal impact on the State.

Local school districts and PSAs that currently receive at-risk funds under Section 31a of the School Aid Act and that met the proposed criteria under the bill, could use a portion of those funds to implement and operate an Early Intervening Program. Currently, districts and PSAs receive an amount per pupil who is eligible for free breakfast, lunch, or milk. The amount received per eligible pupil is equal to a maximum of 11.5% of their foundation allowance. These funds are used for the costs associated with educating pupils determined to be at-risk as prescribed in the Act. Using the FY 2005-06 statewide average foundation allowance for eligible districts of \$7,055 per pupil, districts and PSAs receive a maximum of \$811.33

#### **A0506\S328a**

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.