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BILL ANALYSIS

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Senate Bills 328, 329, and 330 (as enrolled)
Sponsor: Senator Bill Hardiman (S.B. 328)
Senator Nancy Cassis (S.B. 329)
Senator Wayne Kuipers (S.B. 330)
Senate Committee: Education
House Committee: Education

PUBLIC ACTS 119-121 of 2006

Date Completed: 9-22-06

RATIONALE

Michigan reportedly exceeds the national average in the percentage of students who require special education services because of learning disabilities. To address this situation, some recommended the creation of an early intervention program aimed at providing learning and behavioral support to pupils in kindergarten through third grade, which could help to reduce the need for special education placements by identifying and addressing learning difficulties early in a child's education. To fund the program, some suggested that school districts and intermediate school districts (ISDs) should be authorized to use various revenue sources designated for other uses, including payments from the settlement of *Durant, et al. v State of Michigan*, which many districts continue to receive from the State. (In that case, the Michigan Supreme Court found that the State had unconstitutionally cut funding to school districts. 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. For a description of *Durant*, please see **BACKGROUND**.)

CONTENT

The bills amended the State School Aid Act to create an "Early Intervening Program" to provide behavioral and learning assistance to pupils from kindergarten through third grade.

Senate Bill 328 authorizes a district or intermediate school district to use

settlement money from the *Durant, et al. v State of Michigan* lawsuit to fund an Early Intervening Program, if the Program provides specific support or learning strategies or early intervening strategies, as required by the bill.

Senate Bill 329 indicates that it is the intent of the Legislature to appropriate funds for 2006-2007 to be used for grants to districts for the development of a model Early Intervening Program, and for programs that provide early intervening strategies. The bill also authorizes funds formerly appropriated for reduction of class size to be used to fund an Early Intervening Program.

Senate Bill 330 permits funds designated for at-risk students to be used for an Early Intervening Program.

The bills took effect on April 14, 2006.

Senate Bill 328

The bill allows districts and intermediate school districts that receive payments from the *Durant v State of Michigan* settlement to use those funds for an Early Intervening Program. Previously, *Durant* funds paid to a local school district or ISD could 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. In addition, an ISD may use *Durant* funds for certain 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 includes an Early Intervening Program as a permissible use of *Durant* money for local school districts and ISDs.

To qualify under the bill, the Program must do either or both of the activities described below.

It must 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 must include literacy and numeracy supports, sensory motor skill development, behavior supports, instructional consultation for teachers, and the development of a parent/school learning plan. Specific support or learning strategies may include support in or out of the general classroom in areas such as reading, writing, math, visual memory, motor skill development, behavior, or language development, which would be provided based on an understanding of the individual child's learning needs.

Alternatively or in addition, the Program must provide early intervening strategies for pupils in kindergarten through third grade, using school-wide systems of academic and behavioral supports. The strategies must be scientifically research-based and include at least pupil performance indicators based upon response to intervention, instructional consultation for teachers, and ongoing progress monitoring. The bill specifies that a school-wide system of academic and behavioral support should be based on a support team available to the classroom teachers. The members of the team could include the principal, special education staff, reading teachers, and other appropriate personnel who would be available to study the needs of the individual child and work with the teacher to match instruction to those needs.

Senate Bill 329

Model Program

The bill states that it is the intent of the Legislature to appropriate funds for 2006-2007 to the Department of Education for grants to districts.

Up to 76% of that money must 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 must instruct teachers and support staff on how to monitor individual pupil learning and provide specific support or learning strategies to those pupils as early as possible to reduce the need for special education placement. The Program must include literacy and numeracy supports, sensory motor skill development, behavior supports, instructional consultation for teachers, and the development of a parent/school learning plan. Specific support or learning strategies may include support in or out of the general classroom in areas such as reading, writing, math, visual memory, motor skill development, behavior, or language development, which would be provided based on an understanding of the individual child's learning needs.

Each site funded by a grant must serve as either a model site of practice, or a site of improvement. A model site will serve as an ongoing model that provides the Program for pupils and conducts professional development on-site for personnel visiting from a site of improvement. A site of improvement is a site that seeks to implement the Early Intervening Program.

The grants must be distributed through a process established by the Department. The selection of grant recipients must be based on the ability to serve as a model site of practice or, for a site of improvement, based on the highest demonstrated need to improve opportunities for learning success as reflected by one of the following, as determined by the Department:

- A combined percentage of pupils who are learning disabled, emotionally impaired, or speech and language impaired, that is higher than the statewide percentage of those pupils.

-- A percentage of pupils reading below grade level, as measured by the statewide third grade English language arts assessment, that is higher than the statewide percentage of those pupils.

The Department must ensure geographic diversity in awarding grants.

The Department must award up to 19 grants of \$40,000 each, with not more than four being for the development of model sites of practice and not more than 15 for sites of improvement. A model site must 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 must 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 may be used for Early Intervening Programs for pupils at the elementary level only.

Early Intervening Strategies

Up to 24% of the money allocated under the bill must be used for grants to districts for scientifically research-based programs that provide early intervening strategies for pupils in kindergarten through third grade, using school-wide systems of academic and behavioral supports. The strategies must include, at least, pupil performance indicators based upon response to intervention, instructional consultation for teachers, and ongoing progress monitoring. The bill states that a school-wide system of academic and behavioral support should be based on a support team available to the classroom teachers. The members of the team could include the principal, special education staff, reading teachers, and other appropriate personnel who would be available to study the needs of the individual child and work with the teacher to match instruction to those needs.

These grants must be distributed through a competitive process established by the Department, and must be used for providing these programs for pupils at the elementary level only.

Guidelines; Review & Oversight

The Department must develop guidelines on the use of grant funds allocated under the

bill. The guidelines must ensure that the use of the funds is consistent with research and instructional programs that include data-driven processes and proven methods of success.

Programs funded under these provisions must invite visitation and feedback from the Regional Literacy Training Center that serves the recipient district.

The bill requires the Department, by January 30 of the next fiscal year, to prepare and submit to the Governor, 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 must 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.

Other Funding Source

The bill allows districts receiving State aid under former Section 32e of the Act to use those funds for an Early Intervening Program, in addition to the purpose allowed under that section. (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.)

Senate Bill 330

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

(Under Section 31a, a portion of the money appropriated to public schools from the State School Aid Fund is allocated 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.)

An Early Intervention Program funded under the bill must meet the criteria specified in Senate Bill 328, i.e., monitor individual pupil learning and provide specific support or learning strategies and/or provide early intervening strategies using school-wise systems of supports.

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

Since a child's early learning years are critically important, the bills focus on identifying 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 will allow schools to make better use of their resources by identifying problems and preventing the children from ever needing to go to special education.

Opposing Argument

The bills will draw money away from other programs that are already underfunded. Senate Bill 328 allows *Durant* settlement payments to be diverted for the Early Intervening Program. That money currently is used for textbooks, technology, and other vital purposes. Similarly, Senate Bill 329 allows money now used to maintain small class sizes in early grades to be used for this Program instead. Senate Bill 330 permits 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). The potential benefits of an Early Intervening Program cannot compensate for the negative effects that might come from diverting funding from these other essential areas. Although the Early Intervening Program may benefit some children with early learning or behavioral difficulties, the Program is new and unproven, and it should not be funded at the expense of these other important, established programs. To be successful, the Early Intervening Program will require additional funding, rather than money shifted from existing purposes.

Response: The State now takes what is essentially a reactive approach to helping children. The bills 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, the decision to use *Durant* or other funds for the Early Intervening Program will be made at the discretion of the school district. The bills do not mandate the diversion of any funds.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

Senate Bill 328

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

Senate Bill 329

The bill will have no fiscal impact on the State.

The bill allows small class size funding received under Section 20(19) to be used for the costs associated with an Early Intervening Program, in addition to the uses already permitted.

The bill includes intent language for funding the programs under Section 34, but does not include an appropriation. If there were funding in the section, then the cost to the State would be the cost of that appropriation. Also, if there were an appropriation, 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 Section 34, as well as costs related to establishing the competitive grant process outlined in the section.

Senate Bill 330

The bill will have no fiscal impact on the State.

Local school districts and PSAs that receive at-risk funds under Section 31a of the School Aid Act and that meet the criteria under the bill, may use a portion of those funds to implement and operate an Early Intervening Program. 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 (11.5% of \$7,055) per eligible pupil for at-risk uses.

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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.