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BILL ANALYSIS



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Senate Bill 365 (Substitute S-1)  
Senate Bill 366 (as introduced 3-12-09)  
Sponsor: Senator Tom George (S.B. 365)  
          Senator Jason E. Allen (S.B. 366)  
First Committee: Health Policy  
Second Committee: Appropriations

Date Completed: 5-15-09

### **CONTENT**

**Senate Bill 365 (S-1) would amend the Revised School Code to do the following:**

- Establish minimum physical education and health education requirements in public schools for grades K through 5 and 6 through 8.
- Eliminate an exemption from the physical education course for students who are not physically fit and capable of taking it.
- Require the Department of Education to establish guidelines for physical and health education.
- Require a public school's governing board to ensure that the school followed the guidelines.
- Prohibit a public school district from crediting a pupil's participation in extracurricular activities involving physical activity as meeting the physical education requirement.

**Senate Bill 366 would amend the State School Aid Act to require a local school district or public school to comply with the proposed physical and health education requirements in order to receive certain State funds.**

Senate Bill 366 is tie-barred to Senate Bill 365.

### **Senate Bill 365 (S-1)**

The Revised School Code requires each public school to establish and provide physical education and health education for pupils of both sexes. Each pupil attending public school in Michigan who is physically fit and capable of doing so must take the physical education course. The bill would delete the reference to "physically fit and capable of doing so". Additionally, the bill would require that each pupil also take the health education course.

Under the bill, as part of providing physical education, the governing board of a public school would have to ensure both of the following:

- For each of grades K to 5, the school would provide for all pupils at least 30 minutes of physical education at least two days per week for the entire school year.

- For each of grades 6 to 8, the school would provide for all pupils at least 45 minutes of physical education every school day for at least one semester.

As part of providing health education, the school's governing board would have to ensure both of the following:

- For each of grades K to 5, the school would provide for all pupils at least 15 hours of health education per school year.
- For each of grades 6 to 8, the school would provide for all pupils at least 50 hours of health education per school year.

The school's governing board would have to ensure that class size for physical and health education was consistent with class size for other subject areas and classrooms.

The Department of Education would have to establish guidelines for physical and health education that were consistent with the physical and health education standards, grade level content expectations, the State Board of Education's policy on quality physical education, and the best available scientific research concerning physical and health education. The school's governing board would have to ensure that the school followed the guidelines.

Upon the written request of a pupil's parent or legal guardian, a pupil would have to be excused, without penalty or loss of academic credit, from the required physical and/or health education course.

Currently, a school district may credit a pupil's participation in extracurricular athletics or other extracurricular activities involving physical activity as meeting the physical education requirement. Under the bill, a public school district could not do this.

### **Senate Bill 366**

The State School Aid Act appropriates funds for public education through the State School Aid Fund and the General Fund. A portion of the appropriation is allocated for discretionary nonmandated payments to districts (i.e., local school districts or public school academies). In order to receive this allocation, a district must meet certain requirements, such as the administration of a standardized assessment in certain grade levels. Under the bill, a district also would have to comply with the physical and health education requirements proposed by Senate Bill 365 (S-1).

MCL 380.1502 (S.B. 365)  
388.1622b (S.B. 366)

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

#### **Senate Bill 365 (S-1)**

State: The Michigan Department of Education could incur minor costs associated with the requirement that guidelines be established for physical education, if those guidelines were significantly different than the already-available State Board of Education's policy on recommended physical education levels.

Local: According to a survey undertaken by the Michigan Department of Education, about 76% of schools already provide a much higher level of physical education than what the bill would require, as recommended by the National Association for Sport and Physical Education. Those recommended levels are 150 minutes per week for elementary schools and 225 minutes per week for secondary schools. Therefore, it is likely that the physical

education requirements in this bill would not have a fiscal impact on most of the schools. However, there is a potential for fiscal impact with the provision in the bill that participation in extracurricular athletics or other extracurricular activities involving physical activity could no longer be counted as meeting the physical education requirement. In other words, at the present time, a student who plays football may not have to take physical education (P.E.), if the district has such a policy in place. However, the bill would disallow this occurrence. Therefore, schools that currently waive the P.E. requirements for students in extracurricular sports or other extracurricular activities involving physical activity would be required to add those students to P.E. classes. Depending on the magnitude, a district could be required to add classes or teachers to accommodate the additional P.E. requirements, which would raise schools' costs.

### **Senate Bill 366**

The bill would have an indeterminate fiscal impact on State and local government depending, in large part, on the application of a 2008 Michigan Court of Appeals ruling in *Adair, et al. v State of Michigan* (279 Mich App 507). One of the issues in this case was whether record-keeping requirements imposed on school districts by statute and Executive Order constituted a new activity or service or an increase in the level of State-mandated activity or service within the meaning of the Headlee Amendment's prohibition on unfunded mandates (POUM). The Court held that the State did violate the POUM clause, and entered a declaratory judgment in favor of the plaintiffs.

This ruling is pertinent to Senate Bill 366 because the Court addressed the use of discretionary school aid funding to satisfy the State's obligation under Headlee. Under Section 22b of the State School Aid Act (the section this bill would amend), the State conditions districts' receipt of unrestricted funds on compliance with specific requirements, including the provision of data required by State and Federal law. In *Adair*, the State argued that it had met its obligation under Headlee to reimburse districts for any increase in the necessary costs associated with the reporting requirements because the State had supplied the districts with discretionary funds from which they were expected to satisfy those costs. The Court disagreed. "[T]he fact that the state provides a percentage of school district funding does not mean that the state can impose additional mandates upon the districts without appropriating the necessary costs to perform those mandates."

Senate Bill 366 also would condition school districts' receipt of discretionary funding on compliance with an additional mandate: the provision of physical education and health education as Senate Bill 365 (S-1) would require. To the extent that this would constitute a new activity or service, or an increase in the level of State-mandated activity or service, within the meaning of the POUM clause, the State's Headlee obligation to fund this activity or service would not be satisfied without an appropriation to cover the costs of performing that mandate, according to the holding in *Adair*. (Although the Michigan Supreme Court has granted leave to appeal two issues in that case, those issues pertain to 1) whether the POUM clause requires the plaintiffs to prove specific costs in order to establish their entitlement to a declaratory judgment, and 2) whether the plaintiffs are entitled to recover the costs incurred in maintaining the action.)

Fiscal Analyst: Kathryn Summers-Coty

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