

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 328

A bill to amend 1979 PA 94, entitled
"The state school aid act of 1979,"
by amending section 11f (MCL 388.1611f), as amended by 2005 PA 155.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11f. (1) From the appropriations under section 11, there
2 is allocated for the purposes of this section an amount not to
3 exceed \$32,000,000.00 for the fiscal year ending September 30, 2006
4 and for each succeeding fiscal year through the fiscal year ending
5 September 30, 2008. Payments under this section will cease after
6 September 30, 2008. These allocations are for paying the amounts
7 described in subsection (4) to districts and intermediate
8 districts, other than those receiving a lump sum payment under
9 subsection (2), that were not plaintiffs in the consolidated cases

1 known as Durant v State of Michigan, Michigan supreme court docket
2 no. 104458-104492 and that, on or before March 2, 1998, submitted
3 to the state treasurer a board resolution waiving any right or
4 interest the district or intermediate district has or may have in
5 any claim or litigation based on or arising out of any claim or
6 potential claim through September 30, 1997 that is or was similar
7 to the claims asserted by the plaintiffs in the consolidated cases
8 known as Durant v State of Michigan. The waiver resolution shall be
9 in form and substance as required under subsection (7). The state
10 treasurer is authorized to accept such a waiver resolution on
11 behalf of this state. The amounts described in this subsection
12 represent offers of settlement and compromise of any claim or
13 claims that were or could have been asserted by these districts and
14 intermediate districts, as described in this subsection.

15 (2) In addition to any other money appropriated under this
16 act, there was appropriated from the state school aid fund an
17 amount not to exceed \$1,700,000.00 for the fiscal year ending
18 September 30, 1999. This appropriation was for paying the amounts
19 described in this subsection to districts and intermediate
20 districts that were not plaintiffs in the consolidated cases known
21 as Durant v State of Michigan; that, on or before March 2, 1998,
22 submitted to the state treasurer a board resolution waiving any
23 right or interest the district or intermediate district had or may
24 have had in any claim or litigation based on or arising out of any
25 claim or potential claim through September 30, 1997 that is or was
26 similar to the claims asserted by the plaintiffs in the
27 consolidated cases known as Durant v State of Michigan; and for

1 which the total amount listed in section 11h and paid under this
2 section was less than \$75,000.00. For a district or intermediate
3 district qualifying for a payment under this subsection, the entire
4 amount listed for the district or intermediate district in section
5 11h was paid in a lump sum on November 15, 1998 or on the next
6 business day following that date. The amounts paid under this
7 subsection represent offers of settlement and compromise of any
8 claim or claims that were or could have been asserted by these
9 districts and intermediate districts, as described in this
10 subsection.

11 (3) This section does not create any obligation or liability
12 of this state to any district or intermediate district that does
13 not submit a waiver resolution described in this section. This
14 section, any other provision of this act, and section 353e of the
15 management and budget act, 1984 PA 431, MCL 18.1353e, are not
16 intended to admit liability or waive any defense that is or would
17 be available to this state or its agencies, employees, or agents in
18 any litigation or future litigation with a district or intermediate
19 district.

20 (4) The amount paid each fiscal year to each district or
21 intermediate district under subsection (1) shall be 1/20 of the
22 total amount listed in section 11h for each listed district or
23 intermediate district that qualifies for a payment under subsection
24 (1). The amounts listed in section 11h and paid in part under this
25 subsection and in a lump sum under subsection (2) are offers of
26 settlement and compromise to each of these districts or
27 intermediate districts to resolve, in their entirety, any claim or

1 claims that these districts or intermediate districts may have
2 asserted for violations of section 29 of article IX of the state
3 constitution of 1963 through September 30, 1997, which claims are
4 or were similar to the claims asserted by the plaintiffs in the
5 consolidated cases known as Durant v State of Michigan. This
6 section, any other provision of this act, and section 353e of the
7 management and budget act, 1984 PA 431, MCL 18.1353e, shall not be
8 construed to constitute an admission of liability to the districts
9 or intermediate districts listed in section 11h or a waiver of any
10 defense that is or would have been available to the state or its
11 agencies, employees, or agents in any litigation or future
12 litigation with a district or intermediate district.

13 (5) The entire amount of each payment under subsection (1)
14 each fiscal year shall be paid on November 15 of the applicable
15 fiscal year or on the next business day following that date.

16 (6) Funds paid to a district or intermediate district under
17 this section shall be used only for textbooks, electronic
18 instructional material, software, technology, infrastructure or
19 infrastructure improvements, school buses, school security,
20 training for technology, **AN EARLY INTERVENING PROGRAM DESCRIBED IN**
21 **SUBSECTION (8)**, or to pay debt service on voter-approved bonds
22 issued by the district or intermediate district before the
23 effective date of this section. For intermediate districts only,
24 funds paid under this section may also be used for other
25 nonrecurring instructional expenditures including, but not limited
26 to, nonrecurring instructional expenditures for vocational
27 education, or for debt service for acquisition of technology for

1 academic support services. Funds received by an intermediate
2 district under this section may be used for projects conducted for
3 the benefit of its constituent districts at the discretion of the
4 intermediate board. To the extent payments under this section are
5 used by a district or intermediate district to pay debt service on
6 debt payable from millage revenues, and to the extent permitted by
7 law, the district or intermediate district may make a corresponding
8 reduction in the number of mills levied for that debt service.

9 (7) The resolution to be adopted and submitted by a district
10 or intermediate district under this section and section 11g shall
11 read as follows:

12 "Whereas, the board of _____ (name of district
13 or intermediate district) desires to settle and compromise, in
14 their entirety, any claim or claims that the district (or
15 intermediate district) has or had for violations of section 29 of
16 article IX of the state constitution of 1963, which claim or claims
17 are or were similar to the claims asserted by the plaintiffs in the
18 consolidated cases known as Durant v State of Michigan, Michigan
19 supreme court docket no. 104458-104492.

20 Whereas, the district (or intermediate district) agrees to
21 settle and compromise these claims for the consideration described
22 in sections 11f and 11g of the state school aid act of 1979, 1979
23 PA 94, MCL 388.1611f and 388.1611g, and in the amount specified for
24 the district (or intermediate district) in section 11h of the state
25 school aid act of 1979, 1979 PA 94, MCL 388.1611h.

26 Whereas, the board of _____ (name of district or
27 intermediate district) is authorized to adopt this resolution.

1 Now, therefore, be it resolved as follows:

2 1. The board of _____ (name of district or
3 intermediate district) waives any right or interest it may have in
4 any claim or potential claim through September 30, 1997 relating to
5 the amount of funding the district or intermediate district is, or
6 may have been, entitled to receive under the state school aid act
7 of 1979, 1979 PA 94, MCL 388.1601 to 388.1772, or any other source
8 of state funding, by reason of the application of section 29 of
9 article IX of the state constitution of 1963, which claims or
10 potential claims are or were similar to the claims asserted by the
11 plaintiffs in the consolidated cases known as Durant v State of
12 Michigan, Michigan supreme court docket no. 104458-104492.

13 2. The board of _____ (name of district or
14 intermediate district) directs its secretary to submit a certified
15 copy of this resolution to the state treasurer no later than 5 p.m.
16 eastern standard time on March 2, 1998, and agrees that it will not
17 take any action to amend or rescind this resolution.

18 3. The board of _____ (name of district or
19 intermediate district) expressly agrees and understands that, if it
20 takes any action to amend or rescind this resolution, the state,
21 its agencies, employees, and agents shall have available to them
22 any privilege, immunity, and/or defense that would otherwise have
23 been available had the claims or potential claims been actually
24 litigated in any forum.

25 4. This resolution is contingent on continued payments by the
26 state each fiscal year as determined under sections 11f and 11g of
27 the state school aid act of 1979, 1979 PA 94, MCL 388.1611f and

1 388.1611g. However, this resolution shall be an irrevocable waiver
2 of any claim to amounts actually received by the school district or
3 intermediate school district under sections 11f and 11g of the
4 state school aid act of 1979."

5 (8) AN EARLY INTERVENING PROGRAM THAT USES FUNDS RECEIVED
6 UNDER THIS SECTION SHALL MEET EITHER OR BOTH OF THE FOLLOWING:

7 (A) SHALL MONITOR INDIVIDUAL PUPIL LEARNING FOR PUPILS IN
8 GRADES K TO 3 AND PROVIDE SPECIFIC SUPPORT OR LEARNING STRATEGIES
9 TO PUPILS IN GRADES K TO 3 AS EARLY AS POSSIBLE IN ORDER TO REDUCE
10 THE NEED FOR SPECIAL EDUCATION PLACEMENT. THE PROGRAM SHALL INCLUDE
11 LITERACY AND NUMERACY SUPPORTS, SENSORY MOTOR SKILL DEVELOPMENT,
12 BEHAVIOR SUPPORTS, INSTRUCTIONAL CONSULTATION FOR TEACHERS, AND THE
13 DEVELOPMENT OF A PARENT/SCHOOL LEARNING PLAN. SPECIFIC SUPPORT OR
14 LEARNING STRATEGIES MAY INCLUDE SUPPORT IN OR OUT OF THE GENERAL
15 CLASSROOM IN AREAS INCLUDING READING, WRITING, MATH, VISUAL MEMORY,
16 MOTOR SKILL DEVELOPMENT, BEHAVIOR, OR LANGUAGE DEVELOPMENT. THESE
17 WOULD BE PROVIDED BASED ON AN UNDERSTANDING OF THE INDIVIDUAL
18 CHILD'S LEARNING NEEDS.

19 (B) SHALL PROVIDE EARLY INTERVENING STRATEGIES FOR PUPILS IN
20 GRADES K TO 3 USING SCHOOL-WIDE SYSTEMS OF ACADEMIC AND BEHAVIORAL
21 SUPPORTS AND SHALL BE SCIENTIFICALLY RESEARCH-BASED. THE STRATEGIES
22 TO BE PROVIDED SHALL INCLUDE AT LEAST PUPIL PERFORMANCE INDICATORS
23 BASED UPON RESPONSE TO INTERVENTION, INSTRUCTIONAL CONSULTATION FOR
24 TEACHERS, AND ONGOING PROGRESS MONITORING. A SCHOOL-WIDE SYSTEM OF
25 ACADEMIC AND BEHAVIORAL SUPPORT SHOULD BE BASED ON A SUPPORT TEAM
26 AVAILABLE TO THE CLASSROOM TEACHERS. THE MEMBERS OF THIS TEAM COULD
27 INCLUDE THE PRINCIPAL, SPECIAL EDUCATION STAFF, READING TEACHERS,

1 AND OTHER APPROPRIATE PERSONNEL WHO WOULD BE AVAILABLE TO
2 SYSTEMATICALLY STUDY THE NEEDS OF THE INDIVIDUAL CHILD AND WORK
3 WITH THE TEACHER TO MATCH INSTRUCTION TO THE NEEDS OF THE
4 INDIVIDUAL CHILD.