

THE STATE SCHOOL AID ACT OF 1979 (EXCERPT)
Act 94 of 1979

388.1611f Payments to non-plaintiff districts pursuant to *Durant v State of Michigan*; payments for fiscal year ending September 30, 2008; submission of waiver resolution; creation of obligation or liability; offer of settlement and compromise; payment date; use of payments; form and substance of resolution; early intervening program.

Sec. 11f.

(1) From the appropriations under section 11, there is allocated for the purposes of this section an amount not to exceed \$32,000,000.00 for the fiscal year ending September 30, 2008. Payments under this section will cease after September 30, 2008. These allocations are for paying the amounts described in subsection (4) to districts and intermediate districts, other than those receiving a lump sum payment under subsection (2), that were not plaintiffs in the consolidated cases known as *Durant v State of Michigan*, Michigan supreme court docket no. 104458-104492 and that, on or before March 2, 1998, submitted to the state treasurer a board resolution waiving any right or interest the district or intermediate district has or may have in any claim or litigation based on or arising out of any claim or potential claim through September 30, 1997 that is or was similar to the claims asserted by the plaintiffs in the consolidated cases known as *Durant v State of Michigan*. The waiver resolution shall be in form and substance as required under subsection (7). The state treasurer is authorized to accept such a waiver resolution on behalf of this state. The amounts described in this subsection represent offers of settlement and compromise of any claim or claims that were or could have been asserted by these districts and intermediate districts, as described in this subsection.

(2) In addition to any other money appropriated under this act, there was appropriated from the state school aid fund an amount not to exceed \$1,700,000.00 for the fiscal year ending September 30, 1999. This appropriation was for paying the amounts described in this subsection to districts and intermediate districts that were not plaintiffs in the consolidated cases known as *Durant v State of Michigan*; that, on or before March 2, 1998, submitted to the state treasurer a board resolution waiving any right or interest the district or intermediate district had or may have had in any claim or litigation based on or arising out of any claim or potential claim through September 30, 1997 that is or was similar to the claims asserted by the plaintiffs in the consolidated cases known as *Durant v State of Michigan*; and for which the total amount listed in section 11h and paid under this section was less than \$75,000.00. For a district or intermediate district qualifying for a payment under this subsection, the entire amount listed for the district or intermediate district in section 11h was paid in a lump sum on November 15, 1998 or on the next business day following that date. The amounts paid under this subsection represent offers of settlement and compromise of any claim or claims that were or could have been asserted by these districts and intermediate districts, as described in this subsection.

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

(4) The amount paid each fiscal year to each district or intermediate district under subsection (1) shall be 1/20 of the total amount listed in section 11h for each listed district or intermediate district that qualifies for a payment under subsection (1). The amounts listed in section 11h and paid in part under this subsection and in a lump sum under subsection (2) are offers of settlement and compromise to each of these districts or intermediate districts to resolve, in their entirety, any claim or claims that these districts or intermediate districts may have asserted for violations of section 29 of article IX of the state constitution of 1963 through September 30, 1997, which claims are or were similar to the claims asserted by the plaintiffs in the consolidated cases known as *Durant v State of Michigan*. This section, any other provision of this act, and section 353e of the management and budget act, 1984 PA 431, MCL 18.1353e, shall not be construed to constitute an admission of liability to the districts or intermediate districts listed in section 11h or a waiver of any defense that is or would have been available to the state or its agencies, employees, or agents in any litigation or future litigation with a district or intermediate district.

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

(6) Funds paid to a district or intermediate district under this section shall be used only for textbooks, electronic instructional material, software, technology, infrastructure or infrastructure improvements, school buses, school security, training for technology, an early intervening program described in subsection (8), or to pay debt service on voter-approved bonds issued by the district or intermediate district before the effective date of this section. For intermediate districts only, funds paid under this section may also be used for other nonrecurring instructional expenditures including, but not limited to, nonrecurring instructional expenditures for vocational education, or for

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

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

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

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

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

Now, therefore, be it resolved as follows:

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

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

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

4. This resolution is contingent on continued payments by the state each fiscal year as determined under sections 11f and 11g of the state school aid act of 1979, 1979 PA 94, MCL 388.1611f and 388.1611g. However, this resolution shall be an irrevocable waiver of any claim to amounts actually received by the school district or intermediate school district under sections 11f and 11g of the state school aid act of 1979."

(8) An early intervening program that uses funds received under this section shall meet either or both of the following:

(a) Shall monitor individual pupil learning for pupils in grades K to 3 and provide specific support or learning strategies to pupils in grades K to 3 as early as possible in order to reduce the need for special education placement. The program shall 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 including reading, writing, math, visual memory, motor skill development, behavior, or language development. These would be provided based on an understanding of the individual child's learning needs.

(b) Shall provide early intervening strategies for pupils in grades K to 3 using school-wide systems of academic and behavioral supports and shall be scientifically research-based. The strategies to be provided shall include at least pupil performance indicators based upon response to intervention, instructional consultation for teachers, and ongoing progress monitoring. A school-wide system of academic and behavioral support should be based on a support team available to the classroom teachers. The members of this team could include the principal, special education staff, reading teachers, and other appropriate personnel who would be available to systematically study the needs of the individual child and work with the teacher to match instruction to the needs of the individual child.

History: Add. 1997, Act 142, Imd. Eff. Nov. 19, 1997 ;-- Am. 1998, Act 339, Imd. Eff. Oct. 13, 1998 ;-- Am. 1999, Act 119, Imd. Eff. July 20, 1999 ;-- Am. 2000, Act 297, Imd. Eff. July 26, 2000 ;-- Am. 2001, Act 121, Imd. Eff. Sept. 28, 2001 ;-- Am. 2002, Act 191, Imd. Eff. Apr. 26, 2002 ;-- Am. 2002, Act 521, Imd. Eff. July 25, 2002 ;-- Am. 2003, Act 158, Eff. Oct. 1, 2003 ;-- Am. 2004, Act 351, Eff. Oct. 1, 2004 ;-- Am. 2005, Act 155, Eff. Oct. 1, 2005 ;-- Am. 2006, Act 119, Imd. Eff. Apr. 14, 2006 ;-- Am. 2006, Act 342, Eff. Oct. 1, 2006 ;-- Am. 2007, Act 137, Imd. Eff. Nov. 8, 2007

Compiler's Notes: Enacting section 3 of Act 521 of 2002 provides: "Enacting section 3. This amendatory act does not take effect unless the tax on cigarettes under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, is increased by 50 cents or more per pack of cigarettes (25 mills per cigarette) effective on or before September 30, 2002 and the revenue from not less than 20 cents per pack of cigarettes

(10 mills per cigarette) of that increase is dedicated by law for deposit into the state school aid fund established by section 11 of article IX of the state constitution of 1963."For legislation increasing tax on cigarettes and dedicating a portion of increased revenue to state school aid fund, see 2002 PA 503, Imd. Eff. July 18, 2002.Enacting section 1 of Act 351 of 2004 provides:"Enacting section 1. In accordance with section 30 of article IX of the state constitution of 1963, total state spending in this amendatory act from state sources for fiscal year 2004-2005 is estimated at \$11,173,900,000.00 and state appropriations to be paid to local units of government for fiscal year 2004-2005 are estimated at \$11,113,650,400.00."Enacting section 1 of 2005 PA 155 provides:"Enacting section 1. In accordance with section 30 of article I of the state constitution of 1963, total state spending in this amendatory act and in House Bill No. 4831 of the 93rd Legislature from state sources for fiscal year 2005-2006 is estimated at \$11,364,814,000.00 and state appropriations to be paid to local units of government for fiscal year 2005-2006 are estimated at \$11,341,913,100.00."Enacting section 1 of Act 342 of 2006 provides:"Enacting section 1. (1) In accordance with section 30 of article I of the state constitution of 1963, total state spending in this amendatory act from state sources for fiscal year 2006-2007 is estimated at \$11,682,508,200.00 and state appropriations to be paid to local units of government for fiscal year 2006-2007 are estimated at \$11,536,597,200.00.(2) In accordance with section 30 of article I of the state constitution of 1963, total state spending from state sources for fiscal year 2005-2006 in this amendatory act and 2005 PA 155 is estimated at \$11,308,027,200.00 and state appropriations to be paid to local units of government for fiscal year 2004-2005 are estimated at \$11,285,376,300.00."Enacting section 1 of Act 137 of 2007 provides:"Enacting section 1. In accordance with section 30 of article I of the state constitution of 1963, total state spending in this amendatory act from state sources for fiscal year 2007-2008 is estimated at \$11,527,973,800.00 and state appropriations to be paid to local units of government for fiscal year 2007-2008 are estimated at \$11,458,493,300.00."