

Department of Planning and Budget 2010 Fiscal Impact Statement

1. Bill Number: SB46S1

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
Second House ☒ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Stuart

3. Committee: Courts of Justice

4. Title: **Special education program for children with disabilities; recovery of attorney fees**

5. Summary: Authorizes a court to award reasonable attorney fees and costs to a prevailing party, who is the parent of a child with a disability, in a civil action he is allowed to bring before the court because he is aggrieved by earlier findings and a decision resolving a dispute as to program placements, individualized education programs, tuition eligibility and other matters by the Board of Education (BOE).

6. Fiscal Impact Estimates: Indeterminate. See item 8.

7. Budget Amendment Necessary: No.

8. Fiscal Implications: Currently, parents or guardians of a child with a disability are afforded due process to resolve disputes regarding the education of the child. If the parent or guardian is not satisfied with the outcome of the hearing, they reserve the right to file a civil action in circuit court against the Virginia Department of Education (DOE). The proposed legislation provides authority to the circuit court to award reasonable attorney fees and costs in addition to any other relief granted by the court.

The substitute version of the bill provides authority to the circuit court to award reasonable attorney fees as part of the costs (i) to a prevailing party who is the parent of a child with a disability; (ii) to a prevailing party who is the BOE or a local school division against the attorney of a parent who files a complaint or a subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or (iii) to a prevailing party who is the BOE or a local school division against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cause of litigation.

Under this legislation, if a circuit court rules in favor of the parent or guardian who files a civil action against the BOE, the Commonwealth may be liable for any reasonable attorney fees and costs for the parent or guardian. There are a number of variables, such as the frequency of such rulings and the length of the trials, which could impact the cost of this

legislation. Given that these factors are unknown at this time, the fiscal impact of this legislation cannot be determined.

9. Specific Agency or Political Subdivisions Affected: Board of Education, Department of Education, and local school divisions.

10. Technical Amendment Necessary: No.

11. Other Comments: None.

Date: 2/21/2010 dpbsbj

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