

## FLEXIBILITY AND EMPOWERMENT CONTRACTS

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**House Bills 4079 and 4080**  
**Sponsor: Rep. Brian Palmer**  
**Committee: Education**

**Complete to 3-14-05**

### A SUMMARY OF HOUSE BILLS 4079 AND 4080 AS INTRODUCED 1-27-05

House Bill 4080 would amend the State School Aid Act (MCL 388.1601 et al) to make the requirements of the act and the rules promulgated under it subject to waiver under an ed-flex contract issued under the Revised School Code.

House Bill 4079 would create the “Educational Flexibility and Empowerment Law” within the Revised School Code to permit school districts to apply for an educational flexibility and empowerment (“ed-flex”) contract, which would allow the state superintendent of public instruction to waive for a district, for up to five years, provisions of the code and the State School Aid Act that were designated part of a performance-based contract with clearly defined and measurable performance goals, or certain federal requirements in accordance with federal law allowing educational waivers. Except for health and safety requirements, teacher certification requirements, and most additional requirements placed on public school academies, any requirement imposed on a school district under the Revised School Code or the State School Aid Act, or any rule promulgated under the code or the act, would be subject to waiver under an ed-flex contract.

The bills are tie-barred to each other so that neither could become law unless both were enacted. A more detailed description of House Bill 4079 follows.

Planning committee; resolution. If the board of a school district intended to apply for an ed-flex contract, the board would have to establish an ed-flex planning committee, which would have to include a representative of each of the school district's collective bargaining units. The committee would be required to work with the board to develop a resolution indicating the board's intent to apply for the contract; the committee also would have to develop the ed-flex application.

The resolution would have to specify the school or schools in the district to be covered by the ed-flex contract, if the contract were not intended to cover the entire school district. Before adopting the resolution, the board would have to hold at least two public hearings at which the types of waivers sought and the need for them were explained and public comment allowed.

Application. A school district would have to submit an application for an ed-flex contract to the state superintendent. The application would have to contain at least all of the following:

- A specific listing of the requirements proposed to be waived. If the application were intended to serve also as an application for federal waivers under federal law, it would have to include a specific listing of the federal requirements proposed to be waived.
- A statement specifying the need for a waiver for each requirement proposed to be waived, including the purpose and intended results for each waiver.
- A description, for each school year and for the overall term of the contract, of the specific measurable goals for improved pupil performance in the school district or school, which would have to include goals for improving MEAP scores.
- An explanation of how the contract and the waivers would assist the school district or school in achieving its specified performance goals.
- A fiscal impact statement estimating how the waiver or waivers could increase or reduce program costs.
- If the contract were not intended to cover the entire school district, the specific schools to be covered.
- A copy of the required resolution. If the application were intended to serve also as an application for federal waivers, it would have to explain how the public notice requirements of federal law had been met.

("MEAP scores" would mean the scores achieved by the pupils of a school district or school, as applicable, on all Michigan Educational Assessment Program tests administered to pupils of the district or school.)

Approval by superintendent; governor. Upon receipt, the state superintendent would have 60 days to approve or disapprove an ed-flex application and notify the school district of the decision. If approved, the state superintendent promptly would have to enter into an ed-flex contract with the district. If disapproved, the state superintendent's notification to the district would have to explain the specific reasons for the disapproval, and the school district could submit a revised application. If the state superintendent did not notify a school district within 60 days of receiving an application, the application would be considered approved, and the superintendent would have to enter into the proposed ed-flex contract with the district.

House Bill 4079 specifies that within 5 days after approving an application for an ed-flex contract, or after the expiration of the time limit, whichever is earlier, the superintendent would be required to submit the application to the governor. The governor would have 10 days to override the approval of the application (whether it was approved by the superintendent or considered approved due to the expiration of the time limit). If the governor did not override the approval within the 10-day period, the superintendent would be required to promptly enter into the ed-flex contract with the school district. If the governor overrode an approval, the governor would notify the superintendent and the school district, and include notice of the specific reasons for the override. The district could then submit a revised application.

The state superintendent could approve an application only if he or she found all of the following: that the performance goals were sufficiently specific and, if met, would constitute improved pupil achievement; that the contract would allow the school district to enhance learning and to operate in a more effective, efficient, or economical manner; and that the district had exhibited financial responsibility during the preceding three fiscal years. The bill states that the last condition would not preclude the approval of an ed-flex contract for a district in current financial hardship, as long as the hardship were not due to financial irresponsibility, as determined by the state superintendent.

In approving submitted applications, the state superintendent would have to give priority to applications focused on reducing pupil achievement gaps based on race, gender, and socioeconomic status.

Contract. The Michigan Department of Education (MDE) would have to prescribe the form of an ed-flex contract, which would have to contain at least all of the following:

- All matters addressed in the application.
- Assurance that the school district would report its annual progress toward its performance goals.
- An agreement that, in order for the contract to be renewed, the MEAP scores or other performance measurements identified in the application for the school district or school would have to demonstrate adequate annual progress toward meeting the performance goals and attaining a specific measurable benchmark by the end of the contract.
- An agreement on the contents of the “empowerment report” (the final evaluation report) to be filed by the school district at the end of the contract term, summarizing the performance goals achieved during the term of the contract and the programs, curriculum, or other innovative approaches used to achieve these goals.
- The term of the contract, which could not exceed five years.

A provision of the Revised School Code, the State School Aid Act, or a rule promulgated under the code or the act, would be subject to waiver under an ed-flex contract. The state superintendent could *not* waive health and safety requirements, statutory teacher certification requirements, or any requirement under Part 6a of the Revised School Code (which provides for the organization, administration, and staffing of public school academies). Section 503(6) of Part 6a (which requires public school academies to comply with all applicable law, including specific Michigan statutes) could be waived, however, if doing so were necessary to waive a requirement imposed under a part of the code other than Part 6a, and if the same requirement could be waived for a public school.

Section 503(6) lists the following specific acts and provisions with which a public school academy must comply:

- The Open Meetings Act.
- The Freedom of Information Act.

- Provisions prohibiting labor strikes by public school employees.
- Requirements for student identification at the time of enrollment in a school.
- A requirement that schools tag the records of missing students.
- Provisions governing requests for school records.
- A section prohibiting the separation of students into different schools or departments based on race, color, or sex.
- Provisions for bilingual instruction.
- Provisions requiring school buildings to meet construction codes.
- A law guaranteeing a prevailing wage for employees working under a state contract.
- Policies governing the procurement of supplies, materials, and equipment by school districts.

The state superintendent could terminate an ed-flex contract before the end of its term if he or she determined that the school district or school had experienced two consecutive years of declining pupil performance, based on the performance goals and measurements set in the contract. Alternatively, the superintendent could terminate a contract if the school had failed for two consecutive years to meet the adequate yearly progress standards of the Federal No Child Left Behind Act in both mathematics and English language arts at all applicable grade levels for all applicable subgroups. The superintendent would not be required to terminate an ed-flex contract if he or she determined that the decline or failure was due to exceptional or uncontrollable circumstances.

When the term of an ed-flex contract concluded, the school district would have to submit an empowerment report, describing how the district or school met or did not meet the performance goals set forth in the contract. The state superintendent could renew the ed-flex contract if the performance goals were met.

Report to legislature. Under the bill, the superintendent would be required to submit an annual report to the legislature on the status of the educational flexibility and empowerment program, including a report on the contracts issued, and on progress made toward attainment of performance goals.

Innovations and best practices website. As the initial contracts expired, the Department of Education would be required to post information on its website concerning educational innovations and best practices used to achieve student performance goals under the contracts.

## **FISCAL IMPACT:**

These bills would have indeterminate fiscal impacts at the state and local levels, and the impacts could vary greatly depending on which provisions or rules were waived. At the state level, an indeterminate amount of staff time, materials, and supplies would be necessary to fulfill such functions as reviewing applications for waivers, monitoring compliance with contracts, and reviewing the “Empowerment Reports” required under House Bill 4079.

At the local level, there could be a potential savings to districts resulting from the flexibility provisions if these provisions allow districts to operate in a more efficient or economical manner. Also at the local level, an indeterminate amount of additional staff time, materials, and supplies could be necessary to prepare applications for a contract, develop and implement the required performance measures, and fulfill reporting requirements.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.