

HOUSE BILL No. 4079

January 27, 2005, Introduced by Reps. Palmer, Elsenheimer, Hummel, Moolenaar, Drolet, Garfield, Gosselin, Hoogendyk, Hildenbrand, Sheen, Jones, Acciavatti and Proos and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled
"The revised school code,"
(MCL 380.1 to 380.1852) by adding section 1290.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 1290. (1) A SCHOOL DISTRICT MAY APPLY TO THE
2 SUPERINTENDENT OF PUBLIC INSTRUCTION FOR AN EDUCATIONAL FLEXIBILITY
3 AND EMPOWERMENT CONTRACT UNDER THIS SECTION FOR THE SCHOOL DISTRICT
4 OR FOR 1 OR MORE SCHOOLS OPERATED BY THE SCHOOL DISTRICT. AN ED-
5 FLEX CONTRACT ALLOWS THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO
6 WAIVE A PROVISION OF THIS ACT OR OF THE STATE SCHOOL AID ACT OF
7 1979, OR OF A RULE PROMULGATED UNDER THIS ACT OR THE STATE SCHOOL
8 AID ACT OF 1979, DESIGNATED AS PART OF A PERFORMANCE-BASED CONTRACT

1 WITH CLEARLY DEFINED AND MEASURABLE PERFORMANCE GOALS. A SCHOOL
2 DISTRICT ALSO MAY APPLY TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION
3 FOR WAIVER OF CERTAIN FEDERAL REQUIREMENTS, IN ACCORDANCE WITH
4 FEDERAL LAW ALLOWING FEDERAL EDUCATION WAIVERS TO BE ISSUED BY THIS
5 STATE.

6 (2) IF THE BOARD OF A SCHOOL DISTRICT INTENDS TO APPLY FOR AN
7 ED-FLEX CONTRACT, THE BOARD SHALL ESTABLISH AN ED-FLEX PLANNING
8 COMMITTEE TO WORK WITH THE BOARD TO DEVELOP THE RESOLUTION UNDER
9 SUBSECTION (3) AND THE APPLICATION UNDER SUBSECTION (4). THIS
10 COMMITTEE SHALL INCLUDE A REPRESENTATIVE OF EACH OF THE SCHOOL
11 DISTRICT'S COLLECTIVE BARGAINING UNITS THAT WILL BE AFFECTED BY THE
12 ED-FLEX CONTRACT.

13 (3) BEFORE APPLYING FOR AN ED-FLEX CONTRACT, THE BOARD OF A
14 SCHOOL DISTRICT MUST ADOPT A RESOLUTION INDICATING THE BOARD'S
15 INTENT TO APPLY FOR THE EDUCATIONAL FLEXIBILITY AND EMPOWERMENT
16 CONTRACT. IF THE CONTRACT IS NOT INTENDED TO COVER THE ENTIRE
17 SCHOOL DISTRICT, THE RESOLUTION SHALL SPECIFY THE SCHOOLS TO BE
18 COVERED. BEFORE ADOPTING THE RESOLUTION, THE BOARD SHALL HOLD AT
19 LEAST 2 PUBLIC HEARINGS AT WHICH THE TYPES OF WAIVERS SOUGHT AND
20 THE NEED FOR THE WAIVERS ARE EXPLAINED AND PUBLIC COMMENT IS
21 ALLOWED.

22 (4) A SCHOOL DISTRICT SHALL SUBMIT AN APPLICATION FOR AN ED-
23 FLEX CONTRACT TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION IN THE
24 FORM AND MANNER PRESCRIBED BY THE DEPARTMENT. THE APPLICATION SHALL
25 CONTAIN AT LEAST ALL OF THE FOLLOWING:

26 (A) A SPECIFIC LISTING OF THE STATUTES AND RULES PROPOSED TO
27 BE WAIVED. IF THE APPLICATION IS INTENDED TO ALSO SERVE AS AN

1 APPLICATION FOR FEDERAL WAIVERS UNDER FEDERAL LAW, THE APPLICATION
2 ALSO SHALL INCLUDE A SPECIFIC LISTING OF THE FEDERAL STATUTES AND
3 REGULATIONS PROPOSED TO BE WAIVED.

4 (B) A STATEMENT SPECIFYING THE NEED FOR WAIVER FOR EACH
5 STATUTE OR RULE PROPOSED TO BE WAIVED, INCLUDING THE PURPOSE AND
6 INTENDED RESULTS FOR EACH WAIVER.

7 (C) A DESCRIPTION, FOR EACH SCHOOL YEAR AND FOR THE OVERALL
8 TERM OF THE CONTRACT, OF THE SPECIFIC MEASURABLE GOALS FOR IMPROVED
9 PUPIL PERFORMANCE IN THE SCHOOL DISTRICT OR SCHOOL. THESE GOALS
10 SHALL INCLUDE, BUT ARE NOT LIMITED TO, GOALS FOR IMPROVING MEAP
11 SCORES.

12 (D) A DESCRIPTION, FOR EACH SCHOOL YEAR AND FOR THE OVERALL
13 TERM OF THE CONTRACT, OF THE MEASUREMENTS TO BE USED TO DETERMINE
14 WHETHER THE PUPIL PERFORMANCE GOALS UNDER SUBDIVISION (C) HAVE BEEN
15 MET.

16 (E) AN EXPLANATION OF HOW THE CONTRACT AND THE WAIVERS WILL
17 ASSIST THE SCHOOL DISTRICT OR SCHOOL IN ACHIEVING ITS SPECIFIED
18 PERFORMANCE GOALS.

19 (F) A FISCAL IMPACT STATEMENT THAT ESTIMATES HOW THE WAIVER OR
20 WAIVERS MAY INCREASE OR REDUCE PROGRAM COSTS.

21 (G) IF THE CONTRACT IS NOT INTENDED TO COVER THE ENTIRE SCHOOL
22 DISTRICT, THE SPECIFIC SCHOOLS TO BE COVERED.

23 (H) A COPY OF THE BOARD RESOLUTION REQUIRED UNDER SUBSECTION
24 (3). IF THE APPLICATION IS INTENDED TO ALSO SERVE AS AN APPLICATION
25 FOR FEDERAL WAIVERS UNDER FEDERAL LAW, THE APPLICATION ALSO SHALL
26 INCLUDE AN EXPLANATION OF HOW THE PUBLIC NOTICE REQUIREMENTS OF
27 FEDERAL LAW HAVE BEEN MET.

1 (5) WITHIN 60 DAYS AFTER RECEIVING AN APPLICATION UNDER
2 SUBSECTION (4), THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL
3 APPROVE OR DISAPPROVE THE APPLICATION AND NOTIFY THE SCHOOL
4 DISTRICT OF THE DECISION. SUBJECT TO SUBSECTION (6), IF THE
5 SUPERINTENDENT OF PUBLIC INSTRUCTION APPROVES THE APPLICATION, THE
6 SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL PROMPTLY ENTER INTO AN
7 ED-FLEX CONTRACT WITH THE SCHOOL DISTRICT. IF THE SUPERINTENDENT OF
8 PUBLIC INSTRUCTION DISAPPROVES THE APPLICATION, THE NOTIFICATION TO
9 THE SCHOOL DISTRICT SHALL INCLUDE NOTICE OF THE SPECIFIC REASONS
10 FOR THE DISAPPROVAL, AND THE SCHOOL DISTRICT MAY SUBMIT A REVISED
11 APPLICATION UNDER SUBSECTION (4). SUBJECT TO SUBSECTION (6), IF THE
12 SUPERINTENDENT OF PUBLIC INSTRUCTION DOES NOT ACT ON AN APPLICATION
13 AND NOTIFY THE SCHOOL DISTRICT OF HIS OR HER DECISION WITHIN THE
14 TIME LIMIT REQUIRED UNDER THIS SUBSECTION, THE APPLICATION IS
15 CONSIDERED APPROVED AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION
16 SHALL PROMPTLY ENTER INTO THE PROPOSED ED-FLEX CONTRACT WITH THE
17 SCHOOL DISTRICT.

18 (6) WITHIN 5 DAYS AFTER APPROVING AN APPLICATION FOR AN ED-
19 FLEX CONTRACT UNDER SUBSECTION (5) OR AFTER THE EXPIRATION OF THE
20 TIME LIMIT IN SUBSECTION (5) FOR APPROVING OR DISAPPROVING AN
21 APPLICATION, WHICHEVER IS EARLIER, THE SUPERINTENDENT OF PUBLIC
22 INSTRUCTION SHALL SUBMIT THE APPLICATION TO THE GOVERNOR. THE
23 GOVERNOR HAS 10 DAYS FROM THE DATE OF RECEIPT OF THE APPLICATION TO
24 OVERRIDE THE APPROVAL OF THE APPLICATION, WHETHER IT IS APPROVED BY
25 THE SUPERINTENDENT OF PUBLIC INSTRUCTION OR CONSIDERED APPROVED DUE
26 TO THE EXPIRATION OF THE TIME LIMIT. IF THE GOVERNOR DOES NOT
27 OVERRIDE THE APPROVAL WITHIN THIS 10-DAY PERIOD, THE SUPERINTENDENT

1 OF PUBLIC INSTRUCTION SHALL PROMPTLY ENTER INTO THE ED-FLEX
2 CONTRACT WITH THE SCHOOL DISTRICT. IF THE GOVERNOR OVERRIDES AN
3 APPROVAL UNDER THIS SUBSECTION, THE GOVERNOR SHALL NOTIFY THE
4 SUPERINTENDENT OF PUBLIC INSTRUCTION AND THE SCHOOL DISTRICT AND
5 SHALL INCLUDE NOTICE OF THE SPECIFIC REASONS FOR THE OVERRIDE. THE
6 SCHOOL DISTRICT MAY SUBMIT A REVISED APPLICATION UNDER SUBSECTION
7 (4).

8 (7) THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL NOT APPROVE
9 AN APPLICATION SUBMITTED UNDER SUBSECTION (4) UNLESS HE OR SHE
10 FINDS ALL OF THE FOLLOWING:

11 (A) THAT THE PERFORMANCE GOALS CONTAINED IN THE APPLICATION
12 ARE SUFFICIENTLY SPECIFIC AND WILL, IF MET, CONSTITUTE IMPROVED
13 PUPIL ACHIEVEMENT.

14 (B) THAT THE CONTRACT WILL ALLOW THE SCHOOL DISTRICT TO
15 ENHANCE LEARNING AND TO OPERATE IN A MORE EFFECTIVE, EFFICIENT, OR
16 ECONOMICAL MANNER.

17 (C) THAT THE DISTRICT HAS EXHIBITED FINANCIAL RESPONSIBILITY
18 DURING THE PRECEDING 3 FISCAL YEARS, AS DETERMINED BY THE
19 SUPERINTENDENT OF PUBLIC INSTRUCTION. THIS DOES NOT PRECLUDE THE
20 APPROVAL OF AN EDUCATIONAL FLEXIBILITY AND EMPOWERMENT CONTRACT FOR
21 A SCHOOL DISTRICT IN CURRENT FINANCIAL HARDSHIP, SO LONG AS THE
22 HARDSHIP IS NOT DUE TO FINANCIAL IRRESPONSIBILITY AS DETERMINED BY
23 THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

24 (D) THAT THE CONTRACT WILL NOT RESULT IN THE DIMINUTION OF
25 WAGES, HOURS, OR OTHER TERMS AND CONDITIONS OF EMPLOYMENT FOR
26 EMPLOYEES OR COLLECTIVE BARGAINING UNITS OF THE SCHOOL DISTRICT.

27 (8) IN APPROVING APPLICATIONS SUBMITTED UNDER SUBSECTION (4),

1 THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL GIVE PRIORITY TO
2 APPLICATIONS THAT ARE FOCUSED ON REDUCING PUPIL ACHIEVEMENT GAPS
3 BASED ON RACE, GENDER, AND SOCIOECONOMIC STATUS.

4 (9) THE DEPARTMENT SHALL PRESCRIBE THE FORM OF AN ED-FLEX
5 CONTRACT. THE CONTRACT SHALL INCLUDE AT LEAST ALL OF THE FOLLOWING:

6 (A) ALL MATTERS ADDRESSED IN THE APPLICATION.

7 (B) ASSURANCE THAT THE SCHOOL DISTRICT WILL REPORT ITS ANNUAL
8 PROGRESS TOWARD ITS PERFORMANCE GOALS.

9 (C) AN AGREEMENT THAT, IN ORDER FOR THE CONTRACT TO BE
10 RENEWED, THE MEAP SCORES FOR THE SCHOOL DISTRICT OR SCHOOL MUST
11 DEMONSTRATE ADEQUATE ANNUAL PROGRESS TOWARD MEETING THE PERFORMANCE
12 GOALS AND MUST ATTAIN A SPECIFIC MEASURABLE BENCHMARK BY THE END OF
13 THE CONTRACT.

14 (D) AN AGREEMENT ON THE CONTENTS OF THE EMPOWERMENT REPORT TO
15 BE FILED BY THE SCHOOL DISTRICT AT THE END OF THE CONTRACT TERM.
16 THE EMPOWERMENT REPORT SHALL SUMMARIZE THE PERFORMANCE GOALS
17 ACHIEVED DURING THE TERM OF THE CONTRACT AND THE PROGRAMS,
18 CURRICULUM, OR OTHER INNOVATIVE APPROACHES USED TO ACHIEVE THESE
19 GOALS.

20 (E) THE TERM OF THE CONTRACT, WHICH SHALL NOT EXCEED 5 YEARS.

21 (10) THE SUPERINTENDENT OF PUBLIC INSTRUCTION MAY TERMINATE AN
22 ED-FLEX CONTRACT FOR A SCHOOL BEFORE THE END OF ITS TERM IF THE
23 SUPERINTENDENT OF PUBLIC INSTRUCTION DETERMINES THAT THE SCHOOL HAS
24 EXPERIENCED 2 CONSECUTIVE YEARS OF DECLINING PUPIL PERFORMANCE,
25 BASED ON THE PERFORMANCE GOALS AND MEASUREMENTS SET IN THE
26 CONTRACT, OR THAT THE SCHOOL HAS FAILED FOR 2 CONSECUTIVE YEARS TO
27 MEET THE ADEQUATE YEARLY PROGRESS STANDARDS OF THE NO CHILD LEFT

1 BEHIND ACT OF 2001, PUBLIC LAW 107-110, IN BOTH MATHEMATICS AND
2 ENGLISH LANGUAGE ARTS AT ALL APPLICABLE GRADE LEVELS FOR ALL
3 APPLICABLE SUBGROUPS. THE SUPERINTENDENT OF PUBLIC INSTRUCTION IS
4 NOT REQUIRED TO TERMINATE AN ED-FLEX CONTRACT IF HE OR SHE
5 DETERMINES THAT THE DECLINE OR FAILURE IS DUE TO EXCEPTIONAL OR
6 UNCONTROLLABLE CIRCUMSTANCES.

7 (11) AT THE CONCLUSION OF THE TERM OF AN ED-FLEX CONTRACT, THE
8 SCHOOL DISTRICT SHALL SUBMIT ITS EMPOWERMENT REPORT DESCRIBING HOW
9 THE SCHOOL DISTRICT OR SCHOOL MET OR DID NOT MEET THE PERFORMANCE
10 GOALS SET FORTH IN THE CONTRACT. THE SUPERINTENDENT OF PUBLIC
11 INSTRUCTION MAY RENEW THE ED-FLEX CONTRACT IF THE PERFORMANCE GOALS
12 HAVE BEEN MET.

13 (12) THE SUPERINTENDENT OF PUBLIC INSTRUCTION MAY NOT WAIVE
14 ANY OF THE FOLLOWING AS PART OF AN ED-FLEX CONTRACT:

15 (A) HEALTH AND SAFETY REQUIREMENTS.

16 (B) STATUTORY TEACHER CERTIFICATION REQUIREMENTS.

17 (C) A REQUIREMENT UNDER PART 6A, EXCEPT WAIVER OF SECTION
18 503(6) TO THE EXTENT NECESSARY TO ALLOW WAIVER OF ANOTHER
19 REQUIREMENT THAT MEETS BOTH OF THE FOLLOWING:

20 (i) IS IMPOSED UNDER A PART OF THIS ACT OTHER THAN PART 6A.

21 (ii) IS A REQUIREMENT THAT MAY BE WAIVED UNDER THIS SECTION FOR
22 A SCHOOL DISTRICT THAT IS NOT A PUBLIC SCHOOL ACADEMY.

23 (13) THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL SUBMIT AN
24 ANNUAL REPORT TO THE LEGISLATURE ON THE STATUS OF THE EDUCATIONAL
25 FLEXIBILITY AND EMPOWERMENT PROGRAM UNDER THIS SECTION, INCLUDING A
26 REPORT ON ED-FLEX CONTRACTS ISSUED DURING THE YEAR, AND ON PROGRESS
27 MADE TOWARD ATTAINMENT OF PERFORMANCE GOALS.

1 (14) AS THE INITIAL EDUCATIONAL FLEXIBILITY AND EMPOWERMENT
2 CONTRACTS ISSUED UNDER THIS SECTION EXPIRE, THE DEPARTMENT SHALL
3 POST INFORMATION ON ITS WEBSITE ON THE EDUCATIONAL INNOVATIONS AND
4 BEST PRACTICES USED TO ACHIEVE PUPIL PERFORMANCE GOALS UNDER THE
5 CONTRACTS.

6 (15) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (12), ANY
7 PROVISION OF THIS ACT OR THE STATE SCHOOL AID ACT OF 1979, OR OF
8 ANY RULE PROMULGATED UNDER THIS ACT OR THE STATE SCHOOL AID ACT OF
9 1979, IS SUBJECT TO WAIVER UNDER AN ED-FLEX CONTRACT.

10 (16) AS USED IN THIS SECTION:

11 (A) "ED-FLEX CONTRACT" MEANS AN EDUCATIONAL FLEXIBILITY AND
12 EMPOWERMENT CONTRACT ISSUED TO A SCHOOL DISTRICT UNDER THIS SECTION
13 FOR THE SCHOOL DISTRICT OR FOR 1 OR MORE SCHOOLS OPERATED BY THE
14 SCHOOL DISTRICT.

15 (B) "EMPOWERMENT REPORT" MEANS THE FINAL EVALUATION REPORT
16 REQUIRED TO BE FILED AT THE END OF THE TERM OF AN ED-FLEX CONTRACT
17 UNDER SUBSECTION (11).

18 (C) "MEAP SCORES" MEANS THE SCORES ACHIEVED BY THE PUPILS OF A
19 SCHOOL DISTRICT OR SCHOOL, AS APPLICABLE, ON ALL MICHIGAN
20 EDUCATIONAL ASSESSMENT PROGRAM TESTS ADMINISTERED TO PUPILS OF THE
21 SCHOOL DISTRICT OR SCHOOL.

22 (D) "SCHOOL DISTRICT" MEANS EITHER A SCHOOL DISTRICT OR A
23 PUBLIC SCHOOL ACADEMY, AND "BOARD" MEANS EITHER A SCHOOL BOARD OR
24 THE BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY.

25 (17) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE
26 "EDUCATIONAL FLEXIBILITY AND EMPOWERMENT LAW".

27 Enacting section 1. This amendatory act does not take effect

- 1 unless Senate Bill No.____ or House Bill No. 4080(request no.
- 2 00182'05 a) of the 93rd Legislature is enacted into law.