

# SENATE BILL NO. 1176

October 01, 2020, Introduced by Senators HORN, ANANICH, HERTEL, CHANG, ZORN, POLEHANKI and DALEY and referred to the Committee on Education and Career Readiness.

A bill to amend 1976 PA 451, entitled  
"The revised school code,"  
by amending sections 1248 and 1249 (MCL 380.1248 and 380.1249),  
section 1248 as added by 2011 PA 102 and section 1249 as amended by  
2019 PA 6.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1** Sec. 1248. (1) For teachers, as defined in section 1 of  
**2** article I of 1937 (Ex Sess) PA 4, MCL 38.71, all of the following  
**3** apply to policies regarding personnel decisions when conducting a  
**4** staffing or program reduction or any other personnel determination

1 resulting in the elimination of a position, when conducting a  
2 recall from a staffing or program reduction or any other personnel  
3 determination resulting in the elimination of a position, or in  
4 hiring after a staffing or program reduction or any other personnel  
5 determination resulting in the elimination of a position by a  
6 school district or intermediate school district:

7 (a) Subject to subdivision (c), the board of a school district  
8 or intermediate school district shall not adopt, implement,  
9 maintain, or comply with a policy that provides that length of  
10 service or tenure status is the primary or determining factor in  
11 personnel decisions when conducting a staffing or program reduction  
12 or any other personnel determination resulting in the elimination  
13 of a position, when conducting a recall from a staffing or program  
14 reduction or any other personnel determination resulting in the  
15 elimination of a position, or in hiring after a staffing or program  
16 reduction or any other personnel determination resulting in the  
17 elimination of a position.

18 (b) Subject to subdivision (c), the board of a school district  
19 or intermediate school district shall ensure that the school  
20 district or intermediate school district adopts, implements,  
21 maintains, and complies with a policy that provides that all  
22 personnel decisions when conducting a staffing or program reduction  
23 or any other personnel determination resulting in the elimination  
24 of a position, when conducting a recall from a staffing or program  
25 reduction or any other personnel determination resulting in the  
26 elimination of a position, or in hiring after a staffing or program  
27 reduction or any other personnel determination resulting in the  
28 elimination of a position, are based on retaining effective  
29 teachers. The policy ~~shall~~**must** ensure that a teacher who has been

1 rated as ineffective under the performance evaluation system under  
 2 section 1249 is not given any preference that would result in that  
 3 teacher being retained over a teacher who is evaluated as minimally  
 4 effective, effective, or highly effective under the performance  
 5 evaluation system under section 1249. Effectiveness ~~shall~~**must** be  
 6 measured by the performance evaluation system under section 1249,  
 7 and the personnel decisions ~~shall~~**must** be made based on the  
 8 following factors:

9 (i) Individual performance ~~shall~~**must** be the majority factor in  
 10 making the decision, and ~~shall~~**must** consist of but is not limited  
 11 to all of the following:

12 ~~(A) Evidence of student growth, which shall be the predominant~~  
 13 ~~factor in assessing an employee's individual performance.~~

14 (A) ~~(B)~~The teacher's demonstrated pedagogical skills,  
 15 including at least a special determination concerning the teacher's  
 16 knowledge of his or her subject area and the ability to impart that  
 17 knowledge through planning, delivering rigorous content, checking  
 18 for and building higher-level understanding, differentiating, and  
 19 managing a classroom ~~+~~and consistent preparation to maximize  
 20 instructional time.

21 (B) ~~(C)~~The teacher's management of the classroom, manner and  
 22 efficacy of disciplining pupils, rapport with parents and other  
 23 teachers, and ability to withstand the strain of teaching.

24 (C) ~~(D)~~The teacher's attendance and disciplinary record, if  
 25 any.

26 (ii) Significant, relevant accomplishments and contributions.

27 This factor ~~shall~~**must** be based on whether the individual  
 28 contributes to the overall performance of the school by making  
 29 clear, significant, relevant contributions above the normal

1 expectations for an individual in his or her peer group and having  
2 demonstrated a record of exceptional performance.

3 (iii) Relevant special training. This factor ~~shall~~**must** be based  
4 on completion of relevant training other than the professional  
5 development or continuing education that is required by the  
6 employer or by state law, and integration of that training into  
7 instruction in a meaningful way.

8 (c) Except as otherwise provided in this subdivision, length  
9 of service or tenure status ~~shall~~**must** not be a factor in a  
10 personnel decision described in subdivision (a) or (b). However, if  
11 that personnel decision involves 2 or more employees and all other  
12 factors distinguishing those employees from each other are equal,  
13 then length of service or tenure status may be considered as a  
14 tiebreaker.

15 ~~(2) If a collective bargaining agreement is in effect for~~  
16 ~~employees of a school district or intermediate school district as~~  
17 ~~of the effective date of this section and if that collective~~  
18 ~~bargaining agreement prevents compliance with subsection (1), then~~  
19 ~~subsection (1) does not apply to that school district or~~  
20 ~~intermediate school district until after the expiration of that~~  
21 ~~collective bargaining agreement.~~

22 (2) ~~(3)~~ If a teacher brings an action against a school  
23 district or intermediate school district based on this section, the  
24 teacher's sole and exclusive remedy ~~shall be~~**is** an order of  
25 reinstatement commencing 30 days after a decision by a court of  
26 competent jurisdiction. The remedy in an action brought by a  
27 teacher based on this section ~~shall~~**does** not include lost wages,  
28 lost benefits, or any other economic damages.

29 Sec. 1249. (1) ~~Subject to subsection (4), with~~**With** the

1 involvement of teachers and school administrators, the board of a  
 2 school district or intermediate school district or board of  
 3 directors of a public school academy shall adopt and implement for  
 4 all teachers and school administrators a rigorous, transparent, and  
 5 fair performance evaluation system that does all of the following:

6 (a) ~~Evaluates~~ **Subject to section 1249b(1) (i) and subsection**  
 7 **(2) (i), evaluates** the teacher's or school administrator's job  
 8 performance at least annually while providing timely and  
 9 constructive feedback.

10 ~~(b) Establishes clear approaches to measuring student growth~~  
 11 ~~and provides teachers and school administrators with relevant data~~  
 12 ~~on student growth.~~

13 (b) ~~(c)~~ Evaluates a teacher's or school administrator's job  
 14 performance, using multiple rating categories. ~~that take into~~  
 15 ~~account student growth and assessment data. Student growth must be~~  
 16 ~~measured using multiple measures that may include student learning~~  
 17 ~~objectives, achievement of individualized education program goals,~~  
 18 ~~nationally normed or locally developed assessments that are aligned~~  
 19 ~~to state standards, research-based growth measures, or alternative~~  
 20 ~~assessments that are rigorous and comparable across schools within~~  
 21 ~~the school district, intermediate school district, or public school~~  
 22 ~~academy.~~ If the performance evaluation system implemented by a  
 23 school district, intermediate school district, or public school  
 24 academy under this section does not already include the rating of  
 25 teachers as highly effective, effective, minimally effective, and  
 26 ineffective, then the school district, intermediate school  
 27 district, or public school academy shall revise the performance  
 28 evaluation system not later than September 19, 2011 to ensure that  
 29 it rates teachers as highly effective, effective, minimally

1 effective, or ineffective.

2 (c) ~~(d)~~—Uses the evaluations, at a minimum, to inform  
3 decisions regarding all of the following:

4 (i) The effectiveness of teachers and school administrators,  
5 ensuring that they are given ample opportunities for improvement.

6 (ii) Promotion, retention, and development of teachers and  
7 school administrators, including providing relevant coaching,  
8 instruction support, or professional development.

9 (iii) Whether to grant tenure or full certification, or both, to  
10 teachers and school administrators using rigorous standards and  
11 streamlined, transparent, and fair procedures.

12 (iv) Removing ineffective tenured and untenured teachers and  
13 school administrators after they have had ample opportunities to  
14 improve, and ensuring that these decisions are made using rigorous  
15 standards and streamlined, transparent, and fair procedures.

16 (2) The board of a school district or intermediate school  
17 district or board of directors of a public school academy shall  
18 ensure that the performance evaluation system for teachers meets  
19 all of the following:

20 (a) ~~The~~ **Subject to subdivision (i), the** performance evaluation  
21 system must include at least an annual year-end evaluation for all  
22 teachers. An annual year-end evaluation must meet all of the  
23 following:

24 (i) ~~For the 2018-2019 school year, 25% of the annual year-end~~  
25 ~~evaluation must be based on student growth and assessment data.~~  
26 ~~Beginning with the 2019-2020 school year, 40% of the annual year-~~  
27 ~~end evaluation must be based on student growth and assessment data.~~

28 ~~(ii) For core content areas in grades and subjects in which~~  
29 ~~state assessments are administered, 50% of student growth must be~~

1 ~~measured using the state assessments, and the portion of student~~  
 2 ~~growth not measured using state assessments must be measured using~~  
 3 ~~multiple research-based growth measures or alternative assessments~~  
 4 ~~that are rigorous and comparable across schools within the school~~  
 5 ~~district, intermediate school district, or public school academy.~~  
 6 ~~Student growth also may be measured by student learning objectives~~  
 7 ~~or nationally normed or locally adopted assessments that are~~  
 8 ~~aligned to state standards, or based on achievement of~~  
 9 ~~individualized education program goals.~~

10 ~~(iii) The portion of a **A** teacher's annual year-end evaluation~~  
 11 ~~that is not based on student growth and assessment data, as~~  
 12 ~~described under subparagraph (i), must be based primarily on a~~  
 13 ~~teacher's performance as measured by the evaluation tool developed~~  
 14 ~~or adopted by the school district, intermediate school district, or~~  
 15 ~~public school academy under subdivision (f). **(e)**.~~

16 ~~(ii) (iv) The portion of a teacher's evaluation that is not~~  
 17 ~~measured using student growth and assessment data, as described~~  
 18 ~~under subparagraph (i), or using the evaluation tool developed or~~  
 19 ~~adopted by the school district, intermediate school district, or~~  
 20 ~~public school academy, as described ~~under~~**in** subparagraph (iii), **(i)**,~~  
 21 ~~must incorporate criteria enumerated in section 1248(1)(b)(i) to~~  
 22 ~~(iii) that are not otherwise evaluated under subparagraph (i). ~~or~~~~  
 23 ~~(iii).~~

24 ~~(b) If there are student growth and assessment data available~~  
 25 ~~for a teacher for at least 3 school years, the annual year-end~~  
 26 ~~evaluation must be based on the student growth and assessment data~~  
 27 ~~for the most recent 3 consecutive school year period. If there are~~  
 28 ~~not student growth and assessment data available for a teacher for~~  
 29 ~~at least 3 school years, the annual year-end evaluation must be~~

1 ~~based on all student growth and assessment data that are available~~  
2 ~~for the teacher.~~

3       **(b)** ~~(e)~~—The annual year-end evaluation must include specific  
4 performance goals that will assist in improving effectiveness for  
5 the next school year and are developed by the school administrator  
6 or his or her designee conducting the evaluation, in consultation  
7 with the teacher, and any recommended training identified by the  
8 school administrator or designee, in consultation with the teacher,  
9 that would assist the teacher in meeting these goals. For a teacher  
10 described in subdivision ~~(d)~~, **(c)**, the school administrator or  
11 designee shall develop, in consultation with the teacher, an  
12 individualized development plan that includes these goals and  
13 training and is designed to assist the teacher to improve his or  
14 her effectiveness.

15       **(c)** ~~(d)~~—The performance evaluation system must include a  
16 midyear progress report for a teacher who is in the first year of  
17 the probationary period prescribed by section 1 of article II of  
18 1937 (Ex Sess) PA 4, MCL 38.81, or who received a rating of  
19 minimally effective or ineffective in his or her most recent annual  
20 year-end evaluation. The midyear progress report must be used as a  
21 supplemental tool to gauge a teacher's improvement from the  
22 preceding school year and to assist a teacher to improve. All of  
23 the following apply to the midyear progress report:

24       (i) The midyear progress report must be based at least in part  
25 on student achievement.

26       (ii) The midyear progress report must be aligned with the  
27 teacher's individualized development plan under subdivision  
28 ~~(e)~~. **(b)** .

29       (iii) The midyear progress report must include specific



1 performance goals for the remainder of the school year that are  
2 developed by the school administrator conducting the annual year-  
3 end evaluation or his or her designee and any recommended training  
4 identified by the school administrator or designee that would  
5 assist the teacher in meeting these goals. At the midyear progress  
6 report, the school administrator or designee shall develop, in  
7 consultation with the teacher, a written improvement plan that  
8 includes these goals and training and is designed to assist the  
9 teacher to improve his or her rating.

10 (iv) The midyear progress report must not take the place of an  
11 annual year-end evaluation.

12 (d) ~~(e)~~—The performance evaluation system must include  
13 classroom observations to assist in the performance evaluations.  
14 All of the following apply to these classroom observations:

15 (i) A classroom observation must include a review of the  
16 teacher's lesson plan and the state curriculum standard being used  
17 in the lesson and a review of pupil engagement in the lesson.

18 (ii) A classroom observation does not have to be for an entire  
19 class period.

20 (iii) Unless a teacher has received a rating of effective or  
21 highly effective on his or her 2 most recent annual year-end  
22 evaluations, there must be at least 2 classroom observations of the  
23 teacher each school year. At least 1 observation must be  
24 unscheduled.

25 (iv) The school administrator responsible for the teacher's  
26 performance evaluation shall conduct at least 1 of the  
27 observations. Other observations may be conducted by other  
28 observers who are trained in the use of the evaluation tool that is  
29 used under subdivision ~~(f)~~—(e). These other observers may be

1 teacher leaders.

2 (v) A school district, intermediate school district, or public  
3 school academy shall ensure that, within 30 days after each  
4 observation, the teacher is provided with feedback from the  
5 observation.

6 (e) ~~(f)~~—For the purposes of conducting annual year-end  
7 evaluations under the performance evaluation system, by the  
8 beginning of the 2016-2017 school year, the school district,  
9 intermediate school district, or public school academy shall adopt  
10 and implement 1 or more of the evaluation tools for teachers that  
11 are included on the list under subsection ~~(5)~~—(4). However, if a  
12 school district, intermediate school district, or public school  
13 academy has 1 or more local evaluation tools for teachers or  
14 modifications of an evaluation tool on the list under subsection  
15 ~~(5)~~—(4), and the school district, intermediate school district, or  
16 public school academy complies with subsection (3), the school  
17 district, intermediate school district, or public school academy  
18 may conduct annual year-end evaluations for teachers using 1 or  
19 more local evaluation tools or modifications. The evaluation tools  
20 must be used consistently among the schools operated by a school  
21 district, intermediate school district, or public school academy so  
22 that all similarly situated teachers are evaluated using the same  
23 evaluation tool.

24 (f) ~~(g)~~—The performance evaluation system must assign an  
25 effectiveness rating to each teacher of highly effective,  
26 effective, minimally effective, or ineffective, based on his or her  
27 score on the annual year-end evaluation described in this  
28 subsection.

29 (g) ~~(h)~~—As part of the performance evaluation system, and in

1 addition to the requirements of section 1526, a school district,  
2 intermediate school district, or public school academy is  
3 encouraged to assign a mentor or coach to each teacher who is  
4 described in subdivision ~~(d)~~. **(c)**.

5 ~~(i) The performance evaluation system may allow for exemption~~  
6 ~~of student growth data for a particular pupil for a school year~~  
7 ~~upon the recommendation of the school administrator conducting the~~  
8 ~~annual year-end evaluation or his or her designee and approval of~~  
9 ~~the school district superintendent or his or her designee,~~  
10 ~~intermediate superintendent or his or her designee, or chief~~  
11 ~~administrator of the public school academy, as applicable.~~

12 **(h)** ~~(j)~~ The performance evaluation system must provide that,  
13 if a teacher is rated as ineffective on 3 consecutive annual year-  
14 end evaluations, the school district, intermediate school district,  
15 or public school academy shall dismiss the teacher from his or her  
16 employment. This subdivision does not affect the ability of a  
17 school district, intermediate school district, or public school  
18 academy to dismiss a teacher from his or her employment regardless  
19 of whether the teacher is rated as ineffective on 3 consecutive  
20 annual year-end evaluations.

21 **(i)** ~~(k)~~ The performance evaluation system must provide that,  
22 if a teacher is rated as highly effective on 3 consecutive annual  
23 year-end evaluations, the school district, intermediate school  
24 district, or public school academy may choose to conduct a year-end  
25 evaluation biennially instead of annually. However, if a teacher is  
26 not rated as highly effective on 1 of these biennial year-end  
27 evaluations, the teacher ~~shall~~**must** again be provided with annual  
28 year-end evaluations.

29 **(j)** ~~(l)~~ The performance evaluation system must provide that, if

1 a teacher who is not in a probationary period prescribed by section  
 2 1 of article II of 1937 (Ex Sess) PA 4, MCL 38.81, is rated as  
 3 ineffective on an annual year-end evaluation, the teacher may  
 4 request a review of the evaluation and the rating by the school  
 5 district superintendent, intermediate superintendent, or chief  
 6 administrator of the public school academy, as applicable. The  
 7 request for a review must be submitted in writing within 20 days  
 8 after the teacher is informed of the rating. Upon receipt of the  
 9 request, the school district superintendent, intermediate  
 10 superintendent, or chief administrator of the public school  
 11 academy, as applicable, shall review the evaluation and rating and  
 12 may make any modifications as appropriate based on his or her  
 13 review. However, the performance evaluation system must not allow  
 14 for a review as described in this subdivision more than twice in a  
 15 3-school-year period.

16 **(k)** ~~(m)~~—The school district, intermediate school district, or  
 17 public school academy shall provide training to teachers on the  
 18 evaluation tool or tools used by the school district, intermediate  
 19 school district, or public school academy in its performance  
 20 evaluation system and on how each evaluation tool is used. This  
 21 training may be provided by a school district, intermediate school  
 22 district, or public school academy, or by a consortium consisting  
 23 of 2 or more of these.

24 **(l)** ~~(n)~~—A school district, intermediate school district, or  
 25 public school academy shall ensure that training is provided to all  
 26 evaluators and observers. The training must be provided by an  
 27 individual who has expertise in the evaluation tool or tools used  
 28 by the school district, intermediate school district, or public  
 29 school academy ~~which~~ **that** may include either a consultant on that

1 evaluation tool or framework or an individual who has been trained  
2 to train others in the use of the evaluation tool or tools. This  
3 subdivision does not prohibit a school district, intermediate  
4 school district, public school academy, or consortium consisting of  
5 2 or more of these, from providing the training in the use of the  
6 evaluation tool or tools if the trainer has expertise in the  
7 evaluation tool or tools.

8 (3) A school district, intermediate school district, or public  
9 school academy shall post on its public website all of the  
10 following information about the evaluation tool or tools it uses  
11 for its performance evaluation system for teachers:

12 (a) The research base for the evaluation framework,  
13 instrument, and process or, if the school district, intermediate  
14 school district, or public school academy adapts or modifies an  
15 evaluation tool from the list under subsection ~~(5)~~, **(4)**, the  
16 research base for the listed evaluation tool and an assurance that  
17 the adaptations or modifications do not compromise the validity of  
18 that research base.

19 (b) The identity and qualifications of the author or authors  
20 or, if the school district, intermediate school district, or public  
21 school academy adapts or modifies an evaluation tool from the list  
22 under subsection ~~(5)~~, **(4)**, the identity and qualifications of a  
23 person with expertise in teacher evaluations who has reviewed the  
24 adapted or modified evaluation tool.

25 (c) Either evidence of reliability, validity, and efficacy or  
26 a plan for developing that evidence or, if the school district,  
27 intermediate school district, or public school academy adapts or  
28 modifies an evaluation tool from the list under subsection ~~(5)~~,  
29 **(4)**, an assurance that the adaptations or modifications do not

1 compromise the reliability, validity, or efficacy of the evaluation  
2 tool or the evaluation process.

3 (d) The evaluation frameworks and rubrics with detailed  
4 descriptors for each performance level on key summative indicators.

5 (e) A description of the processes for conducting classroom  
6 observations, collecting evidence, conducting evaluation  
7 conferences, developing performance ratings, and developing  
8 performance improvement plans.

9 (f) A description of the plan for providing evaluators and  
10 observers with training.

11 ~~(4) If a collective bargaining agreement was in effect for~~  
12 ~~teachers or school administrators of a school district,~~  
13 ~~intermediate school district, or public school academy as of July~~  
14 ~~19, 2011, if that same collective bargaining agreement is still in~~  
15 ~~effect as of November 5, 2015, and if that collective bargaining~~  
16 ~~agreement prevents compliance with subsection (1), then subsection~~  
17 ~~(1) does not apply to that school district, intermediate school~~  
18 ~~district, or public school academy until after the expiration of~~  
19 ~~that collective bargaining agreement.~~

20 **(4)** ~~(5)~~—The department shall establish and maintain a list of  
21 teacher evaluation tools that have demonstrated evidence of  
22 efficacy and that may be used for the purposes of this section.  
23 That list initially must include at least the evaluation models  
24 recommended in the final recommendations released by the Michigan  
25 council on educator effectiveness in July 2013. The list must  
26 include a statement indicating that school districts, intermediate  
27 school districts, and public school academies are not limited to  
28 only using the evaluation tools that are included on the list. A  
29 school district, intermediate school district, or public school

1 academy is not required to use an evaluation tool for teacher  
2 evaluations that is the same as it uses for school administrator  
3 evaluations or that has the same author or authors as the  
4 evaluation tool it uses for school administrator evaluations. The  
5 department shall promulgate rules establishing standards and  
6 procedures for adding an evaluation tool to or removing an  
7 evaluation tool from the list. These rules must include a process  
8 for a school district, intermediate school district, or public  
9 school academy to submit its own evaluation tool for review for  
10 placement on the list.

11 (5) ~~(6)~~—The training required under subsection (2) must be  
12 paid for from the funds available in the educator evaluation  
13 reserve fund created under section 95a of the state school aid act  
14 of 1979, MCL 388.1695a.

15 (6) ~~(7)~~—This section does not affect the operation or  
16 applicability of section 1248.

17 (7) ~~(8)~~—As used in this section, "teacher" means an individual  
18 who has a valid Michigan teaching certificate or authorization or  
19 who is engaged to teach under section 1233b; who is employed, or  
20 contracted for, by a school district, intermediate school district,  
21 or public school academy; and who is assigned by the school  
22 district, intermediate school district, or public school academy to  
23 deliver direct instruction to pupils in any of grades K to 12 as a  
24 teacher of record.

25 Enacting section 1. This amendatory act does not take effect  
26 unless Senate Bill No. 1177 of the 100th Legislature is enacted  
27 into law.