



Senate Fiscal Agency  
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## BILL ANALYSIS

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House Bill 4693 (Substitute S-1 as reported)  
House Bill 4724 (as reported without amendment)  
Sponsor: Representative Brian Palmer (H.B. 4693)  
Representative Judy Emmons (H.B. 4724)  
House Committee: Education  
Senate Committee: Education

Date Completed: 2-3-04

**RATIONALE**

Public schools in Michigan are governed by the Revised School Code and the State School Aid Act, and must comply with parts of various other State and Federal laws. The Code itself covers issues ranging from vision testing to building construction contracts to the required number of hours of classes a school must hold each year. The School Aid Act contains additional requirements a school district must abide by if wishes to receive funding from the State. Many people believe that complying with all of these laws can take time, money, and energy away from the schools' central mission of educating students.

In addition to complying with the Revised School Code and the State School Aid Act, schools must adhere to administrative rules promulgated by the Department of Education. Administrative rules are written regulations, policies, or instructions that have the effect of law. Under the Code, a school may apply to the State Board of Education for a waiver of an administrative rule, under certain conditions. Also, until 2002, Michigan was permitted to waive certain Federal education statutes under the U.S. "Ed-Flex" Program. In order to be eligible for this program again, Michigan first must demonstrate that it has the authority to waive State education requirements. (Please see **BACKGROUND** for more details on administrative rule waivers and the Federal Ed-Flex program.) It has been suggested that schools should be allowed to apply for a waiver of requirements under the Code and the State School Aid Act, if doing so would improve student performance.

**CONTENT**

**House Bill 4693 (S-1) 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.**

**House Bill 4724 would amend the State School Aid Act 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. The bill is tie-barred to House Bill 4693.**

A more detailed description of House Bill 4693 (S-1) 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

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.

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.

## Annual Report

The State Superintendent would have to submit to the Legislature an annual report on the status of the Educational Flexibility and Empowerment Program, including a report on Ed-Flex contracts issued during the year, and on progress made toward attainment of performance goals.

As the initial Ed-Flex contracts expired, the MDE would have to post on its website information on the educational innovations and best practices used to achieve pupil performance goals under the contracts.

## **BACKGROUND**

### **Rule Waivers**

Under the Revised School Code, as amended by Public Act 289 of 1995, Michigan school districts may request a three-year, renewable waiver from a State Board of Education or MDE rule. The State Superintendent may grant a waiver if a district, intermediate school district (ISD), or public school academy demonstrates that it can address the intent of the rule in a more effective, efficient, or economical manner, or that the waiver is necessary to stimulate improved pupil performance.

An example of a rule that was commonly waived is R 340.1749a(1), which previously required that special education resource room teachers have two years of classroom experience, including one year of special education experience. (The rule was amended in 2002.) Because of the shortage of special education teachers, some schools were better able to staff a resource room without meeting this requirement.

### **Federal Ed-Flex**

The Federal Ed-Flex plan began in 1994 as a "demonstration program" in the Goals 2000: Educate America Act. The program allowed the U.S. Secretary of Education to delegate to six states the authority to waive certain Federal educational requirements if those requirements were seen as impeding local efforts at school reform. In 1996, amendments to the legislation authorized the Secretary to delegate Ed-Flex waiver authority to six additional states for up to five years. Michigan became an Ed-Flex state at that time, but its authority expired at the end of the 2001-2002 school year.

In 1999, Congress passed the Ed-Flex Partnership Act, which allows *any* state educational agency that meets certain eligibility criteria to receive Ed-Flex authority for up to five years. In order to be eligible, states must show that they also can waive

state educational requirements. Michigan, therefore, does not currently qualify for Federal waiver authority.

The 1999 Ed-Flex law contains broader accountability provisions for states than its predecessor statute. Under Ed Flex, states may waive many of the requirements of seven Federal education programs if doing so advances their school improvement efforts. The waiver authority applies to:

- Title I of the Elementary and Secondary Education Act (ESEA) (other than Sections 1116(a) and (c)), including Part A (Title I Basic Program), Part B (Even Start), Part C (Migrant Education), Part D (Neglected and Delinquent), and the Title I portion of the Comprehensive School Reform Demonstration Program.
- Part B of Title II of the ESEA--the State and Local Activities portion of the Eisenhower Professional Development Program.
- Subpart 2 of Part A of Title III of the ESEA (other than Section 3136)--the Technology Literacy Challenge Fund Program.
- Title IV of the ESEA--the Safe and Drug-Free Schools and Communities Program.
- Title VI of the ESEA, including the Class-Size Reduction Program.
- Part C of Title VII of the ESEA--the Emergency Immigrant Education Program.
- The Carl D. Perkins Vocational and Technical Education Program.

Civil rights and Individuals with Disabilities Education Act (IDEA) requirements may not be waived, and no waivers that undermine the purpose of the program may be awarded. States may waive state education authority requirements pertaining to districts and schools. Additionally, the Ed Flex Partnership Act requires a state to meet the Title I requirement to hold children in schools that receive Title I funds to the same academic standards as other schools in the state. (Title I is the \$11.7 billion Federal K-12 education program under ESEA to improve educational achievement among disadvantaged children.)

To date, the following 10 states are part of the Federal Ed-Flex program: Colorado, Delaware, Kansas, Maryland, Massachusetts, North Carolina, Oregon, Pennsylvania, Texas, and Vermont.

Proposed MCL 380.1294 (H.B. 4693)  
MCL 388.1609 (H.B. 4724)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The Revised School Code and the State School Aid Act are, by nature, compulsory and restrictive. Undoubtedly, many requirements of these statutes were enacted in response to a real or perceived problem in a school district, and all were intended to improve the educational process. Each of Michigan's 550 school districts is unique, however, and a statutory requirement that is helpful to one district may hinder learning in another. The bills would provide a means for a district to apply for a waiver of a provision that has been a hurdle to student performance. By empowering districts with this tool, the bill would encourage innovation among educators, who probably know best what works for their students.

The Federal Ed-Flex program already has encouraged innovation among educators. When Michigan participated in the program, one ISD and one district requested and received a waiver that allowed them to redistribute Federal funding for teacher professional development. In doing so, they were able to make more effective use of a limited resource. Currently, Michigan cannot participate in the Federal Ed-Flex program because a State-level Ed-Flex program has not been established. The bills, then, would allow a district to seek a waiver of State *and* Federal laws that are burdensome and ineffective for that district.

Also, House Bill 4693 (S-1) would establish a system of monitoring the use of an Ed-Flex contract. In the Ed-Flex contract application crafted by its planning committee, a district would establish its own measurable goals for improvement in pupil performance. As long as the district could prove to the State Superintendent that those goals had been met, the flexibility contract could continue. If, after two years, pupil performance had declined, based on the contractual goals and measurements, or the school failed for two years to meet the Federal adequate yearly

progress standards, the Superintendent could revoke the contract. This should ensure that a school was meeting the terms of its performance contract.

In the end, Ed-Flex contracts could shift the focus of schools from rules-based compliance with the law to performance-based compliance. The bills would give each individual district the power and flexibility to teach its children in the best way possible.

### **Opposing Argument**

An Ed-Flex program in Michigan is largely unnecessary and could prove detrimental to teaching and learning. Currently, school districts have a great deal of individual say in how they govern their schools. When the School Code was overhauled under Public Act 289 of 1995, all schools (except for first class school districts, i.e. Detroit Public Schools) were granted "General Powers". General Powers authorize a district to do anything it deems appropriate in the interests of education, provided the activity is not specifically prohibited by other regulations.

Further, schools already may apply for a waiver of a State administrative rule if they feel they can address the issue in a more effective or efficient manner. It is not necessary to expand this power to statutory requirements because, under Public Act 289, many obsolete, burdensome, or unnecessary laws were dropped. Those that remained after the winnowing were considered necessary for all schools. In fact, in Committee testimony, no school administrator was able to name a single requirement under State statute that, if waived, would improve student performance.

If the bills were enacted, the Department of Education would have to review, issue, and monitor the Ed-Flex program. This would be problematic because the Department is severely understaffed. It is possible that, if every one of Michigan's 550 districts applied for a waiver, the Department would need a significant number of new employees to review the applications and then to follow up and ensure that the schools were complying with the terms of their contract. It is highly unlikely, however, that any new staff would be added to the Department, considering the State's economic situation. Therefore, the provision that would grant automatic approval of a waiver application after 60 days could

lead to the approval of many questionable Ed-Flex contracts.

A State-wide Ed-Flex program could result in district administrators' seeking waivers in order to cut corners in the name of "student achievement", which could have far-reaching consequences. Laws that currently prohibit corporeal punishment, require classes in health and physical education, and direct schools to assign mentors for new teachers might be subject to waiver under the bills. Each provision of the Revised School Code and the State School Aid Act was enacted for a reason by a majority of legislators; the decision to do away with them should not be left in the hands of one official.

Legislative Analyst: Claire Layman

### **FISCAL IMPACT**

The Department of Education could face increased administrative costs associated with reviewing and processing Ed-Flex waivers if this legislation resulted in increased waiver requests.

The bill could result in decreased local costs, but the ultimate fiscal impact would depend upon how many waivers were sought, the type of waivers sought (e.g., those that would result in increased efficiency or economy), and the degree of success by the school districts in accomplishing the goals of the waivers. In other words, if a district sought a waiver in order to operate in a more economical manner, and if by receiving the waiver the district did see reduced costs with the same or a higher level of educational achievement, then the fiscal impact of this bill would be a reduction in local costs. However, it is not possible to state that this would be a certain outcome.

Fiscal Analyst: Kathryn Summers-Coty

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.