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 BILL ANALYSIS

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House Bill 4693 (Substitute H-1 as passed by the House)
House Bill 4724 (as passed by the House)
Sponsor: Representative Brian Palmer (H.B. 4693)
Representative Judy Emmons (H.B. 4724)
House Committee: Education
Senate Committee: Education

Date Completed: 12-17-03

CONTENT

House Bill 4693 (H-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, State statutes and rules that were 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 and most requirements placed on public school academies, any requirement placed 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 \(H-1\)](#) follows. (Please see [BACKGROUND](#) for more information on Federal waivers.)

Resolution and Hearing

Before applying for an Ed-Flex contract, the board of a school district would have to adopt a resolution indicating the board's intent to

apply for the contract. The resolution would have to specify the school or schools in the district to be covered by the Ed-Flex contract, if it 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. These goals would have to include, but would not be limited to, goals for improving MEAP scores. ("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.)

- An explanation of how the contract and the waivers would assist the school district or school in achieving its specified performance goals.
- 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.

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 would, if met, 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 this 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, 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 acts and acts that contain the following provisions:

- 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. The State Superintendent would not be required to terminate an Ed-Flex contract if he or she determined that the decline 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 information on its website on the educational innovations and best practices used to achieve pupil performance goals under the contracts.

Proposed MCL 380.1294

Legislative Analyst: Claire Layman

BACKGROUND

Rule Waivers

Currently, under Public Act 289 of 1995, Michigan school districts may request a three-year, renewable waiver from a State Board of Education or MDE rule. Under the Act, the State Superintendent may grant a waiver if a district, intermediate school district, or public school academy demonstrates that it can address the intent of the rule in a more effective, efficient, or economical manner, or if it would stimulate improved pupil performance.

An example of a rule commonly waived is R340.1749a(1), which requires that special education resource room teachers have two years of classroom experience, including one year of special education experience. The rule pertains to "eligible handicapped students who...need...two or less of the instructional content areas of language arts, mathematics, science, and social studies taught solely by the resource teacher". Because of the shortage of special education teachers, some schools are 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 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.

FISCAL IMPACT

The bills 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.