

SUBSTITUTE FOR
HOUSE BILL NO. 4760

A bill to amend 1976 PA 451, entitled
"The revised school code,"
(MCL 380.1 to 380.1852) by adding section 1294; and to repeal
acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 1294. (1) A SCHOOL DISTRICT MAY APPLY TO THE SUPERIN-
2 TENDENT OF PUBLIC INSTRUCTION FOR AN EDUCATIONAL FLEXIBILITY AND
3 EMPOWERMENT CONTRACT UNDER THIS SECTION FOR THE SCHOOL DISTRICT
4 OR FOR 1 OR MORE SCHOOLS OPERATED BY THE SCHOOL DISTRICT. AN
5 ED-FLEX CONTRACT ALLOWS THE SUPERINTENDENT OF PUBLIC INSTRUCTION
6 TO WAIVE REQUIREMENTS PLACED ON THE SCHOOL DISTRICT UNDER DESIG-
7 NATED STATE STATUTES AND RULES AS PART OF A PERFORMANCE-BASED
8 CONTRACT WITH CLEARLY DEFINED AND MEASURABLE PERFORMANCE GOALS.
9 A SCHOOL DISTRICT ALSO MAY APPLY TO THE SUPERINTENDENT OF PUBLIC
10 INSTRUCTION FOR WAIVER OF CERTAIN FEDERAL REQUIREMENTS, IN

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1 ACCORDANCE WITH FEDERAL LAW ALLOWING FEDERAL EDUCATION WAIVERS TO
2 BE ISSUED BY THIS STATE.

3 (2) IF THE BOARD OF A SCHOOL DISTRICT INTENDS TO APPLY FOR
4 AN ED-FLEX CONTRACT, THE BOARD SHALL ESTABLISH AN ED-FLEX PLAN-
5 NING COMMITTEE TO WORK WITH THE BOARD TO DEVELOP THE RESOLUTION
6 UNDER SUBSECTION (3) AND THE APPLICATION UNDER SUBSECTION (4).
7 THIS COMMITTEE SHALL INCLUDE A REPRESENTATIVE OF THE SCHOOL
8 DISTRICT'S TEACHER COLLECTIVE BARGAINING UNIT.

9 (3) BEFORE APPLYING FOR AN ED-FLEX CONTRACT, THE BOARD OF A
10 SCHOOL DISTRICT MUST ADOPT A RESOLUTION INDICATING THE BOARD'S
11 INTENT TO APPLY FOR THE EDUCATIONAL FLEXIBILITY AND EMPOWERMENT
12 CONTRACT. IF THE CONTRACT IS NOT INTENDED TO COVER THE ENTIRE
13 SCHOOL DISTRICT, THE RESOLUTION SHALL SPECIFY THE SCHOOLS TO BE
14 COVERED. BEFORE ADOPTING THE RESOLUTION, THE BOARD SHALL HOLD AT
15 LEAST 1 PUBLIC HEARING AT WHICH THE TYPES OF WAIVERS SOUGHT AND
16 THE NEED FOR THE WAIVERS ARE EXPLAINED AND PUBLIC COMMENT IS
17 ALLOWED.

18 (4) A SCHOOL DISTRICT SHALL SUBMIT AN APPLICATION FOR AN
19 ED-FLEX CONTRACT TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION IN
20 THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT. THE APPLICA-
21 TION SHALL CONTAIN AT LEAST ALL OF THE FOLLOWING:

22 (A) A SPECIFIC LISTING OF THE REQUIREMENTS PROPOSED TO BE
23 WAIVED. IF THE APPLICATION IS INTENDED TO ALSO SERVE AS AN
24 APPLICATION FOR FEDERAL WAIVERS UNDER FEDERAL LAW, THE APPLICA-
25 TION ALSO SHALL INCLUDE A SPECIFIC LISTING OF THE FEDERAL
26 REQUIREMENTS PROPOSED TO BE WAIVED.

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1 (B) A STATEMENT SPECIFYING THE NEED FOR WAIVER FOR EACH
2 REQUIREMENT PROPOSED TO BE WAIVED, INCLUDING THE PURPOSE AND
3 INTENDED RESULTS FOR EACH WAIVER.

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

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

13 (E) AN EXPLANATION OF HOW THE CONTRACT AND THE WAIVERS WILL
14 ASSIST THE SCHOOL DISTRICT OR SCHOOL IN ACHIEVING ITS SPECIFIED
15 PERFORMANCE GOALS.

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

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

20 (H) A COPY OF THE BOARD RESOLUTION REQUIRED UNDER SUBSECTION
21 (3). IF THE APPLICATION IS INTENDED TO ALSO SERVE AS AN APPLICA-
22 TION FOR FEDERAL WAIVERS UNDER FEDERAL LAW, THE APPLICATION ALSO
23 SHALL INCLUDE AN EXPLANATION OF HOW THE PUBLIC NOTICE REQUIRE-
24 MENTS OF FEDERAL LAW HAVE BEEN MET.

25 (5) WITHIN 60 DAYS AFTER RECEIVING AN APPLICATION UNDER SUB-
26 SECTION (4), THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL
27 APPROVE OR DISAPPROVE THE APPLICATION AND NOTIFY THE SCHOOL

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1 DISTRICT OF THE DECISION. HOWEVER, UPON NOTIFICATION TO THE
2 SCHOOL DISTRICT, THE SUPERINTENDENT OF PUBLIC INSTRUCTION MAY
3 TAKE AN ADDITIONAL 30 DAYS TO CONSIDER AN APPLICATION. THE
4 SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL CONSULT WITH THE STATE
5 TREASURER OR HIS OR HER DESIGNEE BEFORE APPROVING OR DISAPPROVING
6 AN APPLICATION. IF THE SUPERINTENDENT OF PUBLIC INSTRUCTION
7 APPROVES THE APPLICATION, THE SUPERINTENDENT OF PUBLIC INSTRU-
8 TION SHALL PROMPTLY ENTER INTO AN ED-FLEX CONTRACT WITH THE
9 SCHOOL DISTRICT. IF THE SUPERINTENDENT OF PUBLIC INSTRUCTION
10 DISAPPROVES THE APPLICATION, THE NOTIFICATION TO THE SCHOOL DIS-
11 TRICT SHALL INCLUDE NOTICE OF THE SPECIFIC REASONS FOR THE DISAP-
12 PROVAL, AND THE SCHOOL DISTRICT MAY SUBMIT A REVISED
13 APPLICATION. IF THE SUPERINTENDENT OF PUBLIC INSTRUCTION DOES
14 NOT ACT ON AN APPLICATION AND NOTIFY THE SCHOOL DISTRICT OF HIS
15 OR HER DECISION WITHIN 90 DAYS AFTER RECEIVING THE APPLICATION,
16 THE APPLICATION IS CONSIDERED APPROVED AND THE SUPERINTENDENT OF
17 PUBLIC INSTRUCTION PROMPTLY SHALL ENTER INTO THE PROPOSED ED-FLEX
18 CONTRACT WITH THE SCHOOL DISTRICT.

19 (6) THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL NOT
20 APPROVE AN APPLICATION SUBMITTED UNDER SUBSECTION (4) UNLESS HE
21 OR SHE FINDS ALL OF THE FOLLOWING:

22 (A) THAT THE PERFORMANCE GOALS CONTAINED IN THE APPLICATION
23 ARE SUFFICIENTLY SPECIFIC AND WILL, IF MET, CONSTITUTE IMPROVED
24 PUPIL ACHIEVEMENT.

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

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1 (C) THAT THE SCHOOL DISTRICT IS MEETINGS ITS FINANCIAL
2 OBLIGATIONS AND FISCAL RESPONSIBILITIES.

3 (7) IN APPROVING APPLICATIONS SUBMITTED UNDER SUBSECTION
4 (4), THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL GIVE PRIORITY
5 TO APPLICATIONS THAT ARE FOCUSED ON REDUCING PUPIL ACHIEVEMENT
6 GAPS BASED ON RACE, GENDER, AND SOCIOECONOMIC STATUS.

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

10 (A) ALL MATTERS ADDRESSED IN THE APPLICATION.

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

13 (C) AN AGREEMENT THAT, IN ORDER FOR THE CONTRACT TO BE
14 RENEWED, THE MEAP SCORES [OR OTHER PERFORMANCE MEASUREMENTS
IDENTIFIED IN THE APPLICATION] FOR THE SCHOOL DISTRICT OR SCHOOL
MUST
15 DEMONSTRATE ADEQUATE ANNUAL PROGRESS TOWARD MEETING THE PER-
16 FORMANCE GOALS AND MUST ATTAIN A SPECIFIC MEASURABLE BENCHMARK BY
17 THE END OF THE CONTRACT.

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

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

26 (9) THE SUPERINTENDENT OF PUBLIC INSTRUCTION MAY TERMINATE
27 AN ED-FLEX CONTRACT BEFORE THE END OF ITS TERM IF THE

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1 SUPERINTENDENT OF PUBLIC INSTRUCTION DETERMINES THAT THE SCHOOL
2 DISTRICT OR SCHOOL HAS EXPERIENCED 2 CONSECUTIVE YEARS OF DECLIN-
3 ING PUPIL PERFORMANCE, BASED ON THE PERFORMANCE GOALS AND MEA-
4 SUREMENTS SET IN THE CONTRACT. THE SUPERINTENDENT OF PUBLIC
5 INSTRUCTION IS NOT REQUIRED TO TERMINATE AN ED-FLEX CONTRACT IF
6 HE OR SHE DETERMINES THAT THE DECLINE IS DUE TO EXCEPTIONAL OR
7 UNCONTROLLABLE CIRCUMSTANCES.

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

14 (11) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ANY
15 REQUIREMENT PLACED ON A SCHOOL DISTRICT UNDER THIS ACT OR THE
16 STATE SCHOOL AID ACT OF 1979, OR UNDER ANY RULE PROMULGATED UNDER
17 THIS ACT OR THE STATE SCHOOL AID ACT OF 1979, IS SUBJECT TO
18 WAIVER UNDER AN ED-FLEX CONTRACT. A WAIVER SHALL NOT AFFECT
19 REQUIREMENTS FOR THE EQUITABLE PARTICIPATION OF CHILDREN ENROLLED
20 IN NONPUBLIC SCHOOLS.

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

23 (A) HEALTH AND SAFETY REQUIREMENTS.

24 (B) STATUTORY TEACHER CERTIFICATION REQUIREMENTS.

25 (C) A REQUIREMENT UNDER PART 6A, EXCEPT WAIVER OF SECTION
26 503(6) TO THE EXTENT NECESSARY TO ALLOW WAIVER OF ANOTHER
27 REQUIREMENT THAT MEETS BOTH OF THE FOLLOWING:

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

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

4 (13) THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL SUBMIT
5 AN ANNUAL REPORT TO THE LEGISLATURE ON THE STATUS OF THE EDUCA-
6 TIONAL FLEXIBILITY AND EMPOWERMENT PROGRAM UNDER THIS SECTION,
7 INCLUDING A REPORT ON ED-FLEX CONTRACTS ISSUED DURING THE YEAR,
8 AND ON PROGRESS MADE TOWARD ATTAINMENT OF PERFORMANCE GOALS.

9 (14) AS THE INITIAL EDUCATIONAL FLEXIBILITY AND EMPOWERMENT
10 CONTRACTS ISSUED UNDER THIS SECTION EXPIRE, THE DEPARTMENT SHALL
11 POST INFORMATION ON ITS WEBSITE ON THE EDUCATIONAL INNOVATIONS
12 AND BEST PRACTICES USED TO ACHIEVE PUPIL PERFORMANCE GOALS UNDER
13 THE CONTRACTS.

14 (15) AS USED IN THIS SECTION:

15 (A) "ED-FLEX CONTRACT" MEANS AN EDUCATIONAL FLEXIBILITY AND
16 EMPOWERMENT CONTRACT ISSUED TO A SCHOOL DISTRICT UNDER THIS SEC-
17 TION FOR THE SCHOOL DISTRICT OR FOR 1 OR MORE SCHOOLS OPERATED BY
18 THE SCHOOL DISTRICT.

19 (B) "EMPOWERMENT REPORT" MEANS THE FINAL EVALUATION REPORT
20 REQUIRED TO BE FILED AT THE END OF THE TERM OF AN ED-FLEX CON-
21 TRACT UNDER SUBSECTION (10).

22 (C) "MEAP SCORES" MEANS THE SCORES ACHIEVED BY THE PUPILS OF
23 A SCHOOL DISTRICT OR SCHOOL, AS APPLICABLE, ON ALL MICHIGAN EDU-
24 CATIONAL ASSESSMENT PROGRAM TESTS ADMINISTERED TO PUPILS OF THE
25 SCHOOL DISTRICT OR SCHOOL.

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1 (D) "SCHOOL DISTRICT" INCLUDES A SCHOOL DISTRICT, LOCAL ACT
2 SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR INTERMEDIATE SCHOOL
3 DISTRICT.

4 (16) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE
5 "EDUCATIONAL FLEXIBILITY AND EMPOWERMENT LAW".

6 (17) THIS SECTION IS REPEALED EFFECTIVE 5 YEARS AFTER THE
7 EFFECTIVE DATE OF THIS SECTION. AT LEAST 90 DAYS BEFORE THE DATE
8 OF REPEAL, THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL SUBMIT
9 A REPORT TO THE SENATE AND HOUSE STANDING COMMITTEES HAVING
10 JURISDICTION OVER EDUCATION LEGISLATION AND TO THE OFFICE OF
11 REGULATORY REFORM. THIS REPORT SHALL IDENTIFY PROVISIONS OF
12 STATUTE OR RULE THAT HAVE CONSISTENTLY BEEN THE SUBJECT OF WAIV-
13 ERS OR REQUESTS FOR WAIVER UNDER THIS SECTION AND SHALL MAKE REC-
14 OMMENDATIONS ACCORDINGLY CONCERNING APPROPRIATE CHANGES IN STAT-
15 UTE OR RULE.