

SUBSTITUTE FOR  
SENATE BILL NO. 544

A bill to amend 2000 PA 161, entitled  
"Michigan education savings program act,"  
(MCL 390.1471 to 390.1486) by amending the title and by adding part  
2.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to create the Michigan education savings program; **TO**  
3 **CREATE AN ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM;** to provide  
4 for education savings accounts; to prescribe the powers and duties  
5 of certain state agencies, boards, and departments; **TO CREATE A**  
6 **FUND; TO MAKE APPROPRIATIONS;** to allow certain tax credits or  
7 deductions; and to provide for penalties and remedies.

8 PART 2

9 SEC. 17. THIS PART SHALL BE KNOWN AND MAY BE CITED AS THE

1 "ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM ACT".

2 SEC. 18. AS USED IN THIS PART:

3 (A) "ACCOUNT" OR "ENHANCED MICHIGAN EDUCATION SAVINGS ACCOUNT"  
4 MEANS AN ACCOUNT ESTABLISHED UNDER THIS PART.

5 (B) "ACCOUNT OWNER" MEANS THE PARENT OF THE STUDENT OR THE  
6 STUDENT IF HE OR SHE IS 18 YEARS OF AGE OR OLDER.

7 (C) "DEPARTMENT" MEANS THE DEPARTMENT OF TREASURY.

8 (D) "DEPENDENT" MEANS AN INDIVIDUAL FOR WHOM THE ACCOUNT OWNER  
9 MAY CLAIM A DEPENDENCY EXEMPTION ON HIS OR HER FEDERAL INCOME TAX  
10 RETURN PURSUANT TO THE INTERNAL REVENUE CODE OF 1986, 26 USC 1 TO  
11 9834.

12 (E) "ELIGIBLE SERVICES" MEANS ANY INSTRUCTIONAL SERVICES,  
13 SUPPLEMENTAL SERVICES, AND BACK OFFICE SERVICES OFFERED TO STUDENTS  
14 BY A PUBLIC SCHOOL OR ANY OTHER ORGANIZATION THAT THE DEPARTMENT OF  
15 EDUCATION DETERMINES PURSUANT TO THIS PART ARE QUALIFIED FOR  
16 PAYMENT FROM AN ACCOUNT. ELIGIBLE SERVICES MAY INCLUDE  
17 EXTRACURRICULAR SERVICES OFFERED BY A PUBLIC SCHOOL OR ANY OTHER  
18 ORGANIZATION.

19 (F) "ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM AGREEMENT" OR  
20 "PROGRAM AGREEMENT" MEANS THE AGREEMENT BETWEEN THE PROGRAM AND THE  
21 ACCOUNT OWNER WHO ESTABLISHES AN ACCOUNT.

22 (G) "ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM FUND" OR  
23 "FUND" MEANS THE FUND CREATED IN SECTION 19.

24 (H) "MANAGEMENT CONTRACT" MEANS THE CONTRACT EXECUTED BETWEEN  
25 THE TREASURER AND A PROGRAM MANAGER.

26 (I) "PARENT" MEANS A RESIDENT OF THIS STATE WHO IS A  
27 BIOLOGICAL OR ADOPTIVE PARENT, LEGAL GUARDIAN, LEGAL CUSTODIAN, OR

1 OTHER PERSON WITH AUTHORITY TO ACT ON BEHALF OF THE STUDENT.

2 (J) "PROGRAM" MEANS THE ENHANCED MICHIGAN EDUCATION SAVINGS  
3 PROGRAM ESTABLISHED PURSUANT TO THIS PART.

4 (K) "PROGRAM MANAGER" MEANS AN ENTITY SELECTED BY THE  
5 TREASURER TO ACT AS A MANAGER OF 1 OR MORE OF THE SAVINGS PLANS  
6 OFFERED UNDER THE PROGRAM.

7 (L) "PUBLIC SCHOOL" MEANS THAT TERM AS DEFINED IN THE REVISED  
8 SCHOOL CODE, 1976 PA 451, MCL 380.1 TO 380.1852.

9 (M) "QUALIFIED WITHDRAWAL" MEANS A DISTRIBUTION THAT IS NOT  
10 SUBJECT TO A PENALTY UNDER THIS PART OR TAXATION UNDER THE INCOME  
11 TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.713, AND THAT MEETS  
12 ANY OF THE FOLLOWING:

13 (i) A WITHDRAWAL FROM AN ACCOUNT TO PAY FOR ELIGIBLE SERVICES  
14 PROVIDED BY A PUBLIC SCHOOL OR ANY OTHER ORGANIZATION TO THE  
15 STUDENT OR TO PAY FOR POSTSECONDARY EDUCATION EXPENSES INCURRED  
16 AFTER THE ACCOUNT IS ESTABLISHED.

17 (ii) A TRANSFER OF FUNDS DUE TO THE TERMINATION OF THE  
18 MANAGEMENT CONTRACT AS PROVIDED IN SECTION 20.

19 (iii) A TRANSFER OF FUNDS AS PROVIDED IN SECTION 24.

20 (N) "SAVINGS PLAN" OR "PLANS" MEANS A PLAN OR PLANS THAT  
21 PROVIDE DIFFERENT INVESTMENT STRATEGIES AND ALLOWS ACCOUNT  
22 DISTRIBUTIONS FOR ELIGIBLE SERVICES.

23 (O) "STUDENT" MEANS A PUPIL ENROLLED IN AT LEAST 1 COURSE IN A  
24 PUBLIC SCHOOL.

25 (P) "TREASURER" MEANS THE STATE TREASURER.

26 SEC. 19. (1) THE ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM  
27 FUND IS ESTABLISHED IN THE DEPARTMENT. THE DEPARTMENT SHALL

1 ESTABLISH AN ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM, AND THE  
2 PROGRAM MAY CONSIST OF 1 OR MORE SAVINGS PLANS.

3 (2) THE TREASURER SHALL SOLICIT PROPOSALS FROM ENTITIES TO BE  
4 A PROGRAM MANAGER TO PROVIDE THE SERVICES DESCRIBED IN SUBSECTION  
5 (5).

6 (3) THE PURPOSES, POWERS, AND DUTIES OF THE PROGRAM ARE VESTED  
7 IN AND SHALL BE EXERCISED BY THE TREASURER OR THE DESIGNEE OF THE  
8 TREASURER.

9 (4) THE STATE TREASURER SHALL ADMINISTER THE FUND AND SHALL BE  
10 THE TRUSTEE FOR THE FUND. SUBJECT TO APPROPRIATION, THE TREASURER  
11 MAY USE PROGRAM REVENUES IN THE FUND TO MAINTAIN OR ENHANCE THE  
12 STATE'S EDUCATION PROGRAMS.

13 (5) THE TREASURER MAY EMPLOY OR CONTRACT WITH PERSONNEL AND  
14 CONTRACT FOR SERVICES NECESSARY FOR THE ADMINISTRATION OF EACH  
15 SAVINGS PLAN UNDER THE PROGRAM AND THE INVESTMENT OF THE ASSETS OF  
16 EACH SAVINGS PLAN AND THE FUND UNDER THE PROGRAM, INCLUDING, BUT  
17 NOT LIMITED TO, MANAGERIAL, PROFESSIONAL, LEGAL, CLERICAL,  
18 TECHNICAL, AND ADMINISTRATIVE PERSONNEL OR SERVICES.

19 (6) WHEN SELECTING A PROGRAM MANAGER, THE TREASURER SHALL GIVE  
20 PREFERENCE TO PROPOSALS FROM SINGLE ENTITIES THAT PROPOSE TO  
21 PROVIDE ALL OF THE FUNCTIONS DESCRIBED IN SUBSECTION (5) AND THAT  
22 DEMONSTRATE THE MOST ADVANTAGEOUS COMBINATION, TO BOTH POTENTIAL  
23 PARTICIPANTS AND THIS STATE, OF THE FOLLOWING FACTORS AND THE  
24 MANAGEMENT CONTRACT SHALL ADDRESS THESE FACTORS:

25 (A) FINANCIAL STABILITY.

26 (B) THE SAFETY OF THE INVESTMENT INSTRUMENTS BEING OFFERED.

27 (C) THE ABILITY OF THE INVESTMENT INSTRUMENTS TO TRACK THE

1 INCREASING COSTS OF HIGHER EDUCATION.

2 (D) THE ABILITY OF THE ENTITY TO SATISFY THE RECORD-KEEPING  
3 AND REPORTING REQUIREMENTS OF THIS PART.

4 (E) THE ENTITY'S PLAN FOR MARKETING THE SAVINGS PLAN AND THE  
5 INVESTMENT IT IS WILLING TO MAKE TO PROMOTE THE SAVINGS PLAN.

6 (F) THE FEES, IF ANY, PROPOSED TO BE CHARGED TO PERSONS FOR  
7 OPENING OR MAINTAINING AN ACCOUNT.

8 (G) THE ABILITY OF THE ENTITY TO ACCEPT ELECTRONIC  
9 WITHDRAWALS, INCLUDING PAYROLL DEDUCTION PLANS.

10 (7) THE TREASURER SHALL ENTER INTO A CONTRACT WITH EACH  
11 PROGRAM MANAGER, WHICH SHALL ADDRESS THE RESPECTIVE AUTHORITY AND  
12 RESPONSIBILITY OF THE TREASURER AND THE PROGRAM MANAGER TO DO ALL  
13 OF THE FOLLOWING:

14 (A) DEVELOP AND IMPLEMENT THE SAVINGS PLAN OR PLANS OFFERED  
15 UNDER THE PROGRAM.

16 (B) INVEST THE MONEY RECEIVED IN 1 OR MORE INVESTMENT  
17 INSTRUMENTS.

18 (C) ENGAGE THE SERVICES OF CONSULTANTS ON A CONTRACTUAL BASIS  
19 TO PROVIDE PROFESSIONAL AND TECHNICAL ASSISTANCE AND ADVICE.

20 (D) DETERMINE THE USE OF FINANCIAL ORGANIZATIONS AS ACCOUNT  
21 DEPOSITORIES AND FINANCIAL MANAGERS.

22 (E) CHARGE, IMPOSE, AND COLLECT ANNUAL ADMINISTRATIVE FEES AND  
23 SERVICE IN CONNECTION WITH ANY AGREEMENTS, CONTRACTS, AND  
24 TRANSACTIONS RELATING TO INDIVIDUAL ACCOUNTS, EXCLUSIVE OF INITIAL  
25 SALES CHARGES, WHICH SHALL NOT EXCEED 2.0% OF THE AVERAGE DAILY NET  
26 ASSETS OF THE ACCOUNT.

27 (F) DEVELOP MARKETING PLANS AND PROMOTIONAL MATERIAL.

1 (G) ESTABLISH THE METHODS BY WHICH FUNDS ARE ALLOCATED TO PAY  
2 FOR ADMINISTRATIVE COSTS.

3 (H) PROVIDE CRITERIA FOR TERMINATING AND NOT RENEWING THE  
4 MANAGEMENT CONTRACT.

5 (I) ADDRESS THE ABILITY OF THE PROGRAM MANAGER TO TAKE ANY  
6 ACTION REQUIRED TO KEEP THE SAVINGS PLAN OR PLANS OFFERED UNDER THE  
7 PROGRAM IN COMPLIANCE WITH REQUIREMENTS OF THIS PART AND ITS  
8 MANAGEMENT CONTRACT.

9 (J) KEEP ADEQUATE RECORDS OF EACH ACCOUNT AND PROVIDE THE  
10 TREASURER WITH INFORMATION THAT THE TREASURER REQUIRES RELATED TO  
11 THOSE RECORDS.

12 (K) COMPILE THE INFORMATION CONTAINED IN STATEMENTS REQUIRED  
13 TO BE PREPARED UNDER THIS PART AND PROVIDE THAT COMPILATION TO THE  
14 TREASURER IN A TIMELY MANNER.

15 (L) HOLD ALL ACCOUNTS FOR THE BENEFIT OF THE ACCOUNT OWNER.

16 (M) PROVIDE FOR AUDITS AT LEAST ANNUALLY BY A FIRM OF  
17 CERTIFIED PUBLIC ACCOUNTANTS.

18 (N) PROVIDE THE TREASURER WITH COPIES OF ALL REGULATORY  
19 FILINGS AND REPORTS RELATED TO THE SAVINGS PLAN OR PLANS OFFERED  
20 UNDER THE PROGRAM MADE DURING THE TERM OF THE MANAGEMENT CONTRACT  
21 OR WHILE THE PROGRAM MANAGER IS HOLDING ANY ACCOUNTS, OTHER THAN  
22 CONFIDENTIAL FILINGS OR REPORTS EXCEPT TO THE EXTENT THOSE FILINGS  
23 OR REPORTS ARE RELATED TO OR ARE A PART OF THE SAVINGS PLAN OR  
24 PLANS OFFERED UNDER THE PROGRAM. THE PROGRAM MANAGER SHALL MAKE  
25 AVAILABLE FOR REVIEW BY THE TREASURER THE RESULTS OF ANY PERIODIC  
26 EXAMINATION OF THE PROGRAM MANAGER BY ANY STATE OR FEDERAL BANKING,  
27 INSURANCE, OR SECURITIES COMMISSION, EXCEPT TO THE EXTENT THAT THE

1 REPORT OR REPORTS ARE NOT REQUIRED TO BE DISCLOSED UNDER STATE OR  
2 FEDERAL LAW.

3 (O) ENSURE THAT ANY DESCRIPTION OF THE SAVINGS PLAN OR PLANS  
4 OFFERED UNDER THE PROGRAM, WHETHER IN WRITING OR THROUGH THE USE OF  
5 ANY MEDIA, IS CONSISTENT WITH THE MARKETING PLAN DEVELOPED BY THE  
6 PROGRAM MANAGER.

7 (P) TAKE ANY OTHER NECESSARY AND PROPER ACTIONS TO CARRY OUT  
8 THE PURPOSES OF THIS PART.

9 SEC. 20. (1) THE TREASURER SHALL BE RESPONSIBLE FOR THE  
10 ONGOING SUPERVISION OF EACH MANAGEMENT CONTRACT.

11 (2) A MANAGEMENT CONTRACT SHALL BE FOR A TERM OF YEARS  
12 SPECIFIED IN THE MANAGEMENT CONTRACT.

13 (3) THE TREASURER MAY TERMINATE A MANAGEMENT CONTRACT BASED ON  
14 THE CRITERIA SPECIFIED IN THE MANAGEMENT CONTRACT.

15 (4) THE TREASURER MAY ENTER INTO CONTRACTS THAT IT CONSIDERS  
16 NECESSARY AND PROPER FOR THE IMPLEMENTATION OF THIS PROGRAM.

17 SEC. 26. (1) EACH PROGRAM MANAGER SHALL REPORT DISTRIBUTIONS  
18 FROM AN ACCOUNT TO A PUBLIC SCHOOL OR ANY OTHER ORGANIZATION FOR  
19 THE BENEFIT OF THE STUDENT AND DISTRIBUTIONS FROM AN ACCOUNT FOR  
20 POSTSECONDARY EDUCATION EXPENSES DURING A TAX YEAR TO THE INTERNAL  
21 REVENUE SERVICE AND THE ACCOUNT OWNER OR, TO THE EXTENT REQUIRED BY  
22 FEDERAL LAW OR REGULATION, TO THE DISTRIBUTE.

23 (2) EACH PROGRAM MANAGER SHALL PROVIDE STATEMENTS THAT  
24 IDENTIFY THE CONTRIBUTIONS MADE DURING THE TAX YEAR, THE TOTAL  
25 CONTRIBUTIONS MADE TO THE ACCOUNT FOR THE TAX YEAR, THE VALUE OF  
26 THE ACCOUNT AT THE END OF THE TAX YEAR, DISTRIBUTIONS MADE DURING  
27 THE TAX YEAR, AND ANY OTHER INFORMATION THAT THE TREASURER REQUIRES

1 TO EACH ACCOUNT OWNER ON OR BEFORE THE JANUARY 31 FOLLOWING THE END  
2 OF EACH CALENDAR YEAR.

3 (3) EACH PROGRAM MANAGER SHALL DISCLOSE THE FOLLOWING  
4 INFORMATION IN WRITING TO EACH ACCOUNT OWNER OF AN ENHANCED  
5 MICHIGAN EDUCATION SAVINGS ACCOUNT AND ANY OTHER PERSON WHO  
6 REQUESTS INFORMATION ABOUT AN ACCOUNT:

7 (A) THE TERMS AND CONDITIONS FOR ESTABLISHING AN ACCOUNT.

8 (B) RESTRICTIONS ON THE SUBSTITUTIONS OF STUDENTS AND TRANSFER  
9 OF ACCOUNT FUNDS.

10 (C) THE PERSON ENTITLED TO TERMINATE A PROGRAM AGREEMENT.

11 (D) THE PERIOD OF TIME DURING WHICH A STUDENT MAY RECEIVE  
12 BENEFITS UNDER THE PROGRAM AGREEMENT.

13 (E) THE TERMS AND CONDITIONS UNDER WHICH MONEY MAY BE  
14 WITHDRAWN FROM AN ACCOUNT OR THE PROGRAM, INCLUDING, BUT NOT  
15 LIMITED TO, ANY REASONABLE CHARGES AND FEES AND PENALTIES THAT MAY  
16 BE IMPOSED FOR WITHDRAWAL.

17 (F) THE POTENTIAL TAX CONSEQUENCES ASSOCIATED WITH  
18 CONTRIBUTIONS TO AND DISTRIBUTIONS AND WITHDRAWALS FROM ACCOUNTS.

19 (G) INVESTMENT HISTORY AND POTENTIAL GROWTH OF ACCOUNT FUNDS  
20 AND A PROJECTION OF THE IMPACT OF THE GROWTH OF THE ACCOUNT FUNDS  
21 ON THE MAXIMUM AMOUNT ALLOWABLE IN AN ACCOUNT.

22 (H) ALL OTHER RIGHTS AND OBLIGATIONS UNDER PROGRAM AGREEMENTS  
23 AND ANY OTHER TERMS, CONDITIONS, AND PROVISIONS OF A CONTRACT OR AN  
24 AGREEMENT ENTERED INTO UNDER THIS PART.

25 SEC. 27. (1) THIS PART AND ANY AGREEMENT UNDER THIS PART SHALL  
26 NOT BE CONSTRUED OR INTERPRETED TO DO ANY OF THE FOLLOWING:

27 (A) GUARANTEE THAT A STUDENT WILL BE ADMITTED TO A PUBLIC



1 SCHOOL OF HIS OR HER CHOICE OR, UPON ADMISSION TO A PUBLIC SCHOOL,  
2 WILL BE PERMITTED TO CONTINUE TO ATTEND OR WILL RECEIVE A DEGREE  
3 FROM THE PUBLIC SCHOOL.

4 (B) GUARANTEE THAT AMOUNTS CONTRIBUTED TO AN ACCOUNT WILL BE  
5 SUFFICIENT TO COVER THE ELIGIBLE SERVICES OF A STUDENT.

6 (2) THIS PART DOES NOT CREATE AND SHALL NOT BE CONSTRUED TO  
7 CREATE ANY OBLIGATION UPON THIS STATE OR ANY AGENCY OR  
8 INSTRUMENTALITY OF THIS STATE TO GUARANTEE FOR THE BENEFIT OF AN  
9 ACCOUNT OWNER OR STUDENT ANY OF THE FOLLOWING:

10 (A) THE RATE OF INTEREST OR OTHER RETURN ON AN ACCOUNT.

11 (B) THE PAYMENT OF INTEREST OR OTHER RETURN ON AN ACCOUNT.

12 (3) THE CONTRACTS, APPLICATIONS, DEPOSIT SLIPS, AND OTHER  
13 SIMILAR DOCUMENTS USED IN CONNECTION WITH A CONTRIBUTION TO AN  
14 ACCOUNT SHALL CLEARLY INDICATE THAT THE ACCOUNT IS NOT INSURED BY  
15 THIS STATE AND THAT THE MONEY DEPOSITED INTO AND INVESTMENT RETURN  
16 EARNED ON AN ACCOUNT ARE NOT GUARANTEED BY THIS STATE.

17 SEC. 28. EACH PROGRAM MANAGER SHALL FILE AN ANNUAL REPORT WITH  
18 THE TREASURER AND THE BOARD THAT INCLUDES ALL OF THE FOLLOWING:

19 (A) THE NAMES AND IDENTIFICATION NUMBERS OF ACCOUNT OWNERS AND  
20 STUDENTS. THE INFORMATION REPORTED PURSUANT TO THIS SUBDIVISION IS  
21 NOT SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL  
22 15.231 TO 15.246.

23 (B) THE TOTAL AMOUNT CONTRIBUTED TO ALL ACCOUNTS DURING THE  
24 YEAR.

25 (C) ALL DISTRIBUTIONS FROM ALL ACCOUNTS.

26 (D) ANY INFORMATION THAT THE PROGRAM MANAGER OR TREASURER MAY  
27 REQUIRE REGARDING THE TAXATION OF AMOUNTS CONTRIBUTED TO OR

1   WITHDRAWN FROM ACCOUNTS.

2           SEC. 29. (1) CONTRIBUTIONS TO AND INTEREST EARNED ON AN  
3   ACCOUNT ARE EXEMPT FROM TAXATION AS PROVIDED IN SECTION 30 OF THE  
4   INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.30.

5           (2) WITHDRAWALS MADE FROM AN ACCOUNT ARE EXEMPT FROM TAXATION  
6   AS PROVIDED IN SECTION 30 OF THE INCOME TAX ACT OF 1967, 1967 PA  
7   281, MCL 206.30.