

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

1 SEC. 17. THIS PART SHALL BE KNOWN AND MAY BE CITED AS THE
2 "ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM ACT".

3 SEC. 18. AS USED IN THIS PART:

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

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

8 (C) "CORE INSTRUCTIONAL COURSES" MEANS THOSE COURSES
9 SPECIFICALLY EXCLUDED FROM NONESSENTIAL COURSES AND NONESSENTIAL
10 ELECTIVE COURSES AS PROVIDED UNDER SECTION 166B OF THE STATE SCHOOL
11 AID ACT OF 1979, 1979 PA 94, MCL 388.1766B.

12 (D) "DEPARTMENT" MEANS THE DEPARTMENT OF TREASURY.

13 (E) "DEPENDENT" MEANS AN INDIVIDUAL FOR WHOM THE ACCOUNT OWNER
14 MAY CLAIM A DEPENDENCY EXEMPTION ON HIS OR HER FEDERAL INCOME TAX
15 RETURN PURSUANT TO THE INTERNAL REVENUE CODE OF 1986, 26 USC 1 TO
16 9834.

17 (F) "ELIGIBLE SERVICES" MEANS, EXCEPT AS OTHERWISE PROVIDED
18 UNDER THIS SUBDIVISION, ANY COURSES AND SERVICES OFFERED TO
19 STUDENTS BY A PUBLIC SCHOOL OR ANY OTHER ORGANIZATION THAT THE
20 DEPARTMENT OF EDUCATION DETERMINES PURSUANT TO THIS PART ARE
21 QUALIFIED FOR PAYMENT FROM AN ACCOUNT. ELIGIBLE SERVICES INCLUDE
22 EDUCATIONAL MATERIALS AND SUPPLIES AND OTHER FEES AND COSTS THAT
23 ARE RELATED TO THE ELIGIBLE COURSES AND SERVICES AS DETERMINED BY
24 THE DEPARTMENT OF EDUCATION. ELIGIBLE SERVICES DO NOT INCLUDE ANY
25 FEES AND COSTS THAT ARE NECESSARY ELEMENTS OF A SCHOOL'S ACTIVITIES
26 OR AN INTEGRAL, FUNDAMENTAL PART OF ELEMENTARY AND SECONDARY
27 EDUCATION.

1 (G) "ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM AGREEMENT" OR
2 "PROGRAM AGREEMENT" MEANS THE AGREEMENT BETWEEN THE PROGRAM AND THE
3 ACCOUNT OWNER WHO ESTABLISHES AN ACCOUNT.

4 (H) "ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM FUND" OR
5 "FUND" MEANS THE FUND CREATED IN SECTION 19.

6 (I) "MANAGEMENT CONTRACT" MEANS THE CONTRACT EXECUTED BETWEEN
7 THE TREASURER AND A PROGRAM MANAGER.

8 (J) "PARENT" MEANS A RESIDENT OF THIS STATE WHO IS A
9 BIOLOGICAL OR ADOPTIVE PARENT, LEGAL GUARDIAN, LEGAL CUSTODIAN, OR
10 OTHER PERSON WITH AUTHORITY TO ACT ON BEHALF OF THE STUDENT.

11 (K) "PROGRAM" MEANS THE ENHANCED MICHIGAN EDUCATION SAVINGS
12 PROGRAM ESTABLISHED PURSUANT TO THIS PART.

13 (L) "PROGRAM MANAGER" MEANS AN ENTITY SELECTED BY THE
14 TREASURER TO ACT AS A MANAGER OF 1 OR MORE OF THE SAVINGS PLANS
15 OFFERED UNDER THE PROGRAM.

16 (M) "PUBLIC SCHOOL" MEANS THAT TERM AS DEFINED IN THE REVISED
17 SCHOOL CODE, 1976 PA 451, MCL 380.1 TO 380.1852.

18 (N) "PUPIL" MEANS THAT TERM AS DEFINED IN SECTION 6 OF THE
19 STATE SCHOOL AID ACT OF 1979, 1979 PA 94, MCL 388.1606.

20 (O) "QUALIFIED WITHDRAWAL" MEANS A DISTRIBUTION THAT IS NOT
21 SUBJECT TO A PENALTY UNDER THIS PART OR TAXATION UNDER THE INCOME
22 TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.713, AND THAT MEETS
23 ANY OF THE FOLLOWING:

24 (i) A WITHDRAWAL FROM AN ACCOUNT TO PAY FOR ELIGIBLE SERVICES
25 PROVIDED BY A PUBLIC SCHOOL OR ANY OTHER ORGANIZATION TO THE
26 STUDENT OR TO PAY FOR POSTSECONDARY EDUCATION EXPENSES INCURRED
27 AFTER THE ACCOUNT IS ESTABLISHED.

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

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

4 (P) "SAVINGS PLAN" OR "PLANS" MEANS A PLAN OR PLANS THAT
5 PROVIDE DIFFERENT INVESTMENT STRATEGIES AND ALLOWS ACCOUNT
6 DISTRIBUTIONS FOR ELIGIBLE SERVICES.

7 (Q) "STUDENT" MEANS A PUPIL COUNTED IN MEMBERSHIP IN A PUBLIC
8 SCHOOL.

9 (R) "TREASURER" MEANS THE STATE TREASURER.

10 SEC. 19. (1) THE ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM
11 FUND IS ESTABLISHED IN THE DEPARTMENT. THE DEPARTMENT SHALL
12 ESTABLISH AN ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM, AND THE
13 PROGRAM MAY CONSIST OF 1 OR MORE SAVINGS PLANS.

14 (2) THE TREASURER SHALL SOLICIT PROPOSALS FROM ENTITIES TO BE
15 A PROGRAM MANAGER TO PROVIDE THE SERVICES DESCRIBED IN SUBSECTION
16 (5).

17 (3) THE PURPOSES, POWERS, AND DUTIES OF THE PROGRAM ARE VESTED
18 IN AND SHALL BE EXERCISED BY THE TREASURER OR THE DESIGNEE OF THE
19 TREASURER.

20 (4) THE STATE TREASURER SHALL ADMINISTER THE FUND AND SHALL BE
21 THE TRUSTEE FOR THE FUND. SUBJECT TO APPROPRIATION, THE TREASURER
22 MAY USE PROGRAM REVENUES IN THE FUND TO MAINTAIN OR ENHANCE THE
23 STATE'S EDUCATION PROGRAMS.

24 (5) THE TREASURER MAY EMPLOY OR CONTRACT WITH PERSONNEL AND
25 CONTRACT FOR SERVICES NECESSARY FOR THE ADMINISTRATION OF EACH
26 SAVINGS PLAN UNDER THE PROGRAM AND THE INVESTMENT OF THE ASSETS OF
27 EACH SAVINGS PLAN AND THE FUND UNDER THE PROGRAM, INCLUDING, BUT

1 NOT LIMITED TO, MANAGERIAL, PROFESSIONAL, LEGAL, CLERICAL,
2 TECHNICAL, AND ADMINISTRATIVE PERSONNEL OR SERVICES.

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

9 (A) FINANCIAL STABILITY.

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

11 (C) THE ABILITY OF THE INVESTMENT INSTRUMENTS TO TRACK THE
12 INCREASING COSTS OF HIGHER EDUCATION.

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

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

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

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

21 (7) THE TREASURER SHALL ENTER INTO A CONTRACT WITH EACH
22 PROGRAM MANAGER, WHICH SHALL ADDRESS THE RESPECTIVE AUTHORITY AND
23 RESPONSIBILITY OF THE TREASURER AND THE PROGRAM MANAGER TO DO ALL
24 OF THE FOLLOWING:

25 (A) DEVELOP AND IMPLEMENT THE SAVINGS PLAN OR PLANS OFFERED
26 UNDER THE PROGRAM.

27 (B) INVEST THE MONEY RECEIVED IN 1 OR MORE INVESTMENT

1 INSTRUMENTS.

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

4 (D) DETERMINE THE USE OF FINANCIAL ORGANIZATIONS AS ACCOUNT
5 DEPOSITORIES AND FINANCIAL MANAGERS.

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

11 (F) DEVELOP MARKETING PLANS AND PROMOTIONAL MATERIAL.

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

14 (H) PROVIDE CRITERIA FOR TERMINATING AND NOT RENEWING THE
15 MANAGEMENT CONTRACT.

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

20 (J) KEEP ADEQUATE RECORDS OF EACH ACCOUNT AND PROVIDE THE
21 TREASURER WITH INFORMATION THAT THE TREASURER REQUIRES RELATED TO
22 THOSE RECORDS.

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

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

27 (M) PROVIDE FOR AUDITS AT LEAST ANNUALLY BY A FIRM OF

1 CERTIFIED PUBLIC ACCOUNTANTS.

2 (N) PROVIDE THE TREASURER WITH COPIES OF ALL REGULATORY
3 FILINGS AND REPORTS RELATED TO THE SAVINGS PLAN OR PLANS OFFERED
4 UNDER THE PROGRAM MADE DURING THE TERM OF THE MANAGEMENT CONTRACT
5 OR WHILE THE PROGRAM MANAGER IS HOLDING ANY ACCOUNTS, OTHER THAN
6 CONFIDENTIAL FILINGS OR REPORTS EXCEPT TO THE EXTENT THOSE FILINGS
7 OR REPORTS ARE RELATED TO OR ARE A PART OF THE SAVINGS PLAN OR
8 PLANS OFFERED UNDER THE PROGRAM. THE PROGRAM MANAGER SHALL MAKE
9 AVAILABLE FOR REVIEW BY THE TREASURER THE RESULTS OF ANY PERIODIC
10 EXAMINATION OF THE PROGRAM MANAGER BY ANY STATE OR FEDERAL BANKING,
11 INSURANCE, OR SECURITIES COMMISSION, EXCEPT TO THE EXTENT THAT THE
12 REPORT OR REPORTS ARE NOT REQUIRED TO BE DISCLOSED UNDER STATE OR
13 FEDERAL LAW.

14 (O) ENSURE THAT ANY DESCRIPTION OF THE SAVINGS PLAN OR PLANS
15 OFFERED UNDER THE PROGRAM, WHETHER IN WRITING OR THROUGH THE USE OF
16 ANY MEDIA, IS CONSISTENT WITH THE MARKETING PLAN DEVELOPED BY THE
17 PROGRAM MANAGER.

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

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

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

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

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

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

7 (2) EACH PROGRAM MANAGER SHALL PROVIDE STATEMENTS THAT
8 IDENTIFY THE CONTRIBUTIONS MADE DURING THE TAX YEAR, THE TOTAL
9 CONTRIBUTIONS MADE TO THE ACCOUNT FOR THE TAX YEAR, THE VALUE OF
10 THE ACCOUNT AT THE END OF THE TAX YEAR, DISTRIBUTIONS MADE DURING
11 THE TAX YEAR, AND ANY OTHER INFORMATION THAT THE TREASURER REQUIRES
12 TO EACH ACCOUNT OWNER ON OR BEFORE THE JANUARY 31 FOLLOWING THE END
13 OF EACH CALENDAR YEAR.

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

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

19 (B) RESTRICTIONS ON THE SUBSTITUTIONS OF STUDENTS AND TRANSFER
20 OF ACCOUNT FUNDS.

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

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

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

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

3 (G) INVESTMENT HISTORY AND POTENTIAL GROWTH OF ACCOUNT FUNDS
4 AND A PROJECTION OF THE IMPACT OF THE GROWTH OF THE ACCOUNT FUNDS
5 ON THE MAXIMUM AMOUNT ALLOWABLE IN AN ACCOUNT.

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

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

11 (A) GUARANTEE THAT A STUDENT WILL BE ADMITTED TO A PUBLIC
12 SCHOOL OF HIS OR HER CHOICE OR, UPON ADMISSION TO A PUBLIC SCHOOL,
13 WILL BE PERMITTED TO CONTINUE TO ATTEND OR WILL RECEIVE A DEGREE
14 FROM THE PUBLIC SCHOOL.

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

17 (2) THIS PART DOES NOT CREATE AND SHALL NOT BE CONSTRUED TO
18 CREATE ANY OBLIGATION UPON THIS STATE OR ANY AGENCY OR
19 INSTRUMENTALITY OF THIS STATE TO GUARANTEE FOR THE BENEFIT OF AN
20 ACCOUNT OWNER OR STUDENT ANY OF THE FOLLOWING:

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

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

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

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

3 (A) THE NAMES AND IDENTIFICATION NUMBERS OF ACCOUNT OWNERS AND
4 STUDENTS. THE INFORMATION REPORTED PURSUANT TO THIS SUBDIVISION IS
5 NOT SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL
6 15.231 TO 15.246.

7 (B) THE TOTAL AMOUNT CONTRIBUTED TO ALL ACCOUNTS DURING THE
8 YEAR.

9 (C) ALL DISTRIBUTIONS FROM ALL ACCOUNTS.

10 (D) ANY INFORMATION THAT THE PROGRAM MANAGER OR TREASURER MAY
11 REQUIRE REGARDING THE TAXATION OF AMOUNTS CONTRIBUTED TO OR
12 WITHDRAWN FROM ACCOUNTS.

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

16 (2) WITHDRAWALS MADE FROM AN ACCOUNT ARE EXEMPT FROM TAXATION
17 AS PROVIDED IN SECTION 30 OF THE INCOME TAX ACT OF 1967, 1967 PA
18 281, MCL 206.30.