

SUBSTITUTE FOR  
HOUSE BILL NO. 5238

A bill to amend 1976 PA 451, entitled  
"The revised school code,"  
by amending section 1274a (MCL 380.1274a), as amended by 2017 PA  
23.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1274a. (1) The board of a school district or intermediate  
2 school district may contract with a qualified provider for the  
3 acquisition or financing of energy conservation ~~and~~ **IMPROVEMENTS OR**  
4 operational improvements to school facilities or infrastructure.  
5 These improvements or the financing or refunding of the  
6 improvements may be paid from operating funds of the school  
7 district, from the proceeds of bonds or notes issued for energy  
8 conservation ~~and~~ **IMPROVEMENTS OR** operational improvements to school  
9 facilities, or from an installment contract or lease-purchase

1 agreement, or the board or intermediate school board may enter into  
2 1 or more energy saving performance contracts. These contracts may  
3 contain a written financial guarantee providing that the costs of  
4 improvements will be paid only if the energy savings **OR OPERATIONAL**  
5 **SAVINGS** are sufficient to cover them. Energy conservation ~~and~~  
6 ~~operational~~ improvements to school facilities may include, but are  
7 not limited to, **ADDING SQUARE FOOTAGE TO EXISTING SCHOOL**  
8 **FACILITIES**; building envelope improvements; heating, ventilating,  
9 and cooling upgrades; lighting retrofits; installing or upgrading  
10 an energy management system; motor, pump, or fan replacements;  
11 domestic water use reductions; information technology improvements  
12 associated with an energy conservation ~~and operational~~ improvement  
13 to school facilities; municipal utility improvements associated  
14 with an energy conservation ~~and operational~~ improvement to school  
15 facilities; and upgrading other energy consuming equipment or  
16 appliances. **OPERATIONAL IMPROVEMENTS INCLUDE, BUT ARE NOT LIMITED**  
17 **TO, ADDING SQUARE FOOTAGE TO EXISTING SCHOOL FACILITIES, OR**  
18 **INSTALLING EQUIPMENT OR PROVIDING SERVICES THAT RESULT IN**  
19 **DECREASED, ELIMINATED, OR AVOIDED OPERATING OR MAINTENANCE COSTS.**  
20 **OPERATIONAL IMPROVEMENTS DO NOT HAVE TO BE ENERGY CONSERVATION**  
21 **RELATED.**

22 (2) A school board or intermediate school board that contracts  
23 for energy conservation ~~and~~ **IMPROVEMENTS OR** operational  
24 improvements to school facilities under subsection (1) may require  
25 the qualified provider to furnish a bond that guarantees energy  
26 cost savings **OR OPERATIONAL SAVINGS** for a specified period of time.

27 (3) If a school board or intermediate school board enters into

1 an energy saving performance contract under this section, all of  
2 the following apply:

3 (a) The bids for the contract shall provide a detailed  
4 breakdown of the energy performance savings **OR OPERATIONAL SAVINGS**  
5 to be derived each year and for the duration of the energy saving  
6 performance contract, including at least all of the following:

7 (i) A description of the guaranteed energy use savings **OR**  
8 **OPERATIONAL SAVINGS**, and tasks to be performed under the energy  
9 saving performance contract.

10 (ii) The combined total net cost of all of the energy  
11 conservation measures **OR OPERATIONAL IMPROVEMENTS** in the project.

12 (iii) The projected energy savings and operating and  
13 maintenance cost savings resulting from the project.

14 (iv) The useful life of each energy conservation measure **OR**  
15 **OPERATIONAL IMPROVEMENT**.

16 (v) The simple payback period.

17 (b) The qualified provider shall certify that measurement and  
18 verification techniques for determining cost savings will be  
19 performed in accordance with the protocols promulgated by the  
20 International Performance Measurement and Verification Protocol,  
21 Inc., now known as Efficiency Value-~~VALUATION~~ **VALUATION** Organization.

22 (4) The board of a school district or intermediate school  
23 district may provide for the removal or treatment of asbestos or  
24 other material injurious to health for school facilities and may  
25 pay for the improvements from operating funds of the school  
26 district or from the proceeds of bonds or notes issued for that  
27 purpose.

1           (5) Issuance of bonds for the purposes authorized by this  
2 section shall be considered as issued for capital expenditures for  
3 all purposes including section 16 of article IX of the state  
4 constitution of 1963. A lease-purchase agreement issued pursuant to  
5 this subsection is not subject to the revised municipal finance  
6 act, 2001 PA 34, MCL 141.2101 to 141.2821, and is not a municipal  
7 security or a debt as those terms are defined in that act.

8           (6) Energy conservation ~~and~~ **IMPROVEMENTS OR** operational  
9 improvements to school facilities, or substance removal or  
10 treatment authorized by this section is subject to the competitive  
11 bidding requirements of section 1267.

12           (7) If energy conservation ~~and~~ **IMPROVEMENTS OR** operational  
13 improvements to school facilities are made by a school district or  
14 intermediate school district as provided in this section, the  
15 school board or intermediate school board shall determine the  
16 following information and shall report the following information to  
17 the state treasurer within 60 days after the completion of the  
18 improvements:

19           (a) Name of each facility to which an improvement was made and  
20 a description of the energy conservation ~~and~~ **IMPROVEMENTS OR**  
21 operational improvements to school facilities.

22           (b) Actual energy consumption during the 12-month period  
23 before commencement of the **ENERGY CONSERVATION** improvement.

24           (c) Project costs and expenditures, including the total of all  
25 lease payments over the duration of the lease-purchase agreement.

26           (d) Estimated annual energy savings **OR OPERATIONAL SAVINGS**,  
27 including projected savings over the duration of the installment

1 contract.

2 (8) If energy conservation ~~and~~ **IMPROVEMENTS OR** operational  
3 improvements to school facilities are made as provided in this  
4 section, the school board or intermediate school board shall report  
5 to the state treasurer by July 1 of each of the 5 years after the  
6 improvements are completed the actual annual energy consumption **OR**  
7 **OPERATIONAL SAVINGS** of each facility to which improvements were  
8 made. The forms for the reports required by this section shall be  
9 furnished by the state treasurer.

10 (9) An installment contract described in this section may  
11 include a lease-purchase agreement, which may be a multiyear  
12 contractual obligation that provides for automatic renewal unless  
13 positive action is taken by the board of the school district or  
14 intermediate school district to terminate that contract. Payments  
15 under a lease-purchase agreement are a current operating expense  
16 subject to annual appropriations of funds by the board of the  
17 school district or intermediate school district and shall obligate  
18 the board of the school district or intermediate school district  
19 only for those sums payable during the fiscal year of contract  
20 execution or any renewal year thereafter. The board of the school  
21 district or intermediate school district may make payments under a  
22 lease-purchase agreement from any legally available funds or from a  
23 combination of energy or operational savings, capital  
24 contributions, future replacement costs avoided, or billable  
25 revenue enhancements that result from energy conservation ~~and~~  
26 **IMPROVEMENTS OR** operational improvements to school facilities, if  
27 the board of the school district or intermediate school district

1 has determined that those funds are sufficient to cover, in  
2 aggregate over the full term of the contractual agreement, the cost  
3 of the energy conservation ~~and-IMPROVEMENTS OR~~ operational  
4 improvements to school facilities. The lease-purchase agreement  
5 terminates immediately and absolutely and without further  
6 obligation on the part of the board of the school district or  
7 intermediate school district at the close of the fiscal year in  
8 which it was executed or renewed or at such time as appropriated  
9 and otherwise unobligated funds are no longer available to satisfy  
10 the obligations of the board of the school district or intermediate  
11 school district under the lease-purchase agreement. During the term  
12 of the lease-purchase agreement, the board of the school district  
13 or intermediate school district is the vested owner of the energy  
14 conservation ~~and-IMPROVEMENTS OR~~ operational improvements and may  
15 grant a security interest in the energy conservation ~~and~~  
16 **IMPROVEMENTS OR** operational improvements to the provider of the  
17 lease-purchase agreement. The board of the school district or  
18 intermediate school district shall not be obligated under a lease-  
19 purchase agreement for more than 20 years after either the date of  
20 the final completion of the energy conservation ~~and-IMPROVEMENTS OR~~  
21 operational improvements to school facilities or the end of the  
22 useful life of the aggregate energy conservation ~~and-IMPROVEMENTS~~  
23 **OR** operational improvements to school facilities, whichever occurs  
24 first. Upon the termination of the lease-purchase agreement and the  
25 satisfaction of the obligations of the board of the school district  
26 or intermediate school district, the provider of the lease-purchase  
27 agreement shall release its security interest in the energy

1 conservation ~~and~~ **IMPROVEMENTS OR** operational improvements.

2 (10) As used in this section:

3 (a) "Energy saving performance contract" means an agreement  
4 for the evaluation, recommendation, and implementation of energy  
5 conservation measures **OR OPERATIONAL IMPROVEMENTS** including, but  
6 not limited to, an energy audit or detailed energy study; the  
7 design, installation, operation, and maintenance of 1 or more  
8 energy conservation measures; energy management services; and an  
9 energy savings guarantee.

10 (b) "Qualified provider" means an individual or a business  
11 entity that is experienced in performing design, analysis, and  
12 installation of energy conservation ~~and~~ **IMPROVEMENTS OR** operational  
13 improvements and facility energy management measures and that will  
14 provide these services under the contract with a guarantee or on a  
15 performance basis.