

Act No. 135
Public Acts of 2018
Approved by the Governor
May 9, 2018
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May 10, 2018
EFFECTIVE DATE: May 10, 2018

**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Reps. Griffin and Iden

ENROLLED HOUSE BILL No. 5238

AN ACT to amend 1976 PA 451, entitled “An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, intermediate school districts, and other public school entities; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, intermediate school districts, and other public school entities; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to make appropriations for certain purposes; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts,” by amending section 1274a (MCL 380.1274a), as amended by 2017 PA 23.

The People of the State of Michigan enact:

Sec. 1274a. (1) The board of a school district or intermediate school district may contract with a qualified provider for the acquisition or financing of energy conservation improvements or operational improvements to school facilities or infrastructure. These improvements or the financing or refunding of the improvements may be paid from operating funds of the school district, from the proceeds of bonds or notes issued for energy conservation improvements or operational improvements to school facilities, or from an installment contract or lease-purchase agreement, or the board or intermediate school board may enter into 1 or more energy saving performance contracts. These contracts may contain a written financial guarantee providing that the costs of improvements will be paid only if the energy savings or operational savings are sufficient to cover them. Energy conservation improvements to school facilities may include, but are not limited to, adding square footage to existing school facilities; building envelope improvements; heating, ventilating, and cooling upgrades; lighting retrofits; installing or upgrading an energy management system; motor, pump, or fan replacements; domestic water use reductions; information technology improvements associated with an energy conservation improvement to school facilities; municipal utility improvements associated with an energy conservation improvement to school facilities; and upgrading other energy consuming equipment or appliances. Operational improvements include, but are not limited to, adding square footage to existing school facilities, or installing equipment or providing services that result in decreased, eliminated, or avoided operating or maintenance costs. Operational improvements do not have to be energy conservation related.

(2) A school board or intermediate school board that contracts for energy conservation improvements or operational improvements to school facilities under subsection (1) may require the qualified provider to furnish a bond that guarantees energy cost savings or operational savings for a specified period of time.

(3) If a school board or intermediate school board enters into an energy saving performance contract under this section, all of the following apply:

(a) The bids for the contract shall provide a detailed breakdown of the energy performance savings or operational savings to be derived each year and for the duration of the energy saving performance contract, including at least all of the following:

(i) A description of the guaranteed energy use savings or operational savings, and tasks to be performed under the energy saving performance contract.

(ii) The combined total net cost of all of the energy conservation measures or operational improvements in the project.

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

(iv) The useful life of each energy conservation measure or operational improvement.

(v) The simple payback period.

(b) The qualified provider shall certify that measurement and verification techniques for determining cost savings will be performed in accordance with the protocols promulgated by the International Performance Measurement and Verification Protocol, Inc., now known as Efficiency Valuation Organization.

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

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

(6) Energy conservation improvements or operational improvements to school facilities, or substance removal or treatment authorized by this section is subject to the competitive bidding requirements of section 1267.

(7) If energy conservation improvements or operational improvements to school facilities are made by a school district or intermediate school district as provided in this section, the school board or intermediate school board shall determine the following information and shall report the following information to the state treasurer within 60 days after the completion of the improvements:

(a) Name of each facility to which an improvement was made and a description of the energy conservation improvements or operational improvements to school facilities.

(b) Actual energy consumption during the 12-month period before commencement of the energy conservation improvement.

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

(d) Estimated annual energy savings or operational savings, including projected savings over the duration of the installment contract.

(8) If energy conservation improvements or operational improvements to school facilities are made as provided in this section, the school board or intermediate school board shall report to the state treasurer by July 1 of each of the 5 years after the improvements are completed the actual annual energy consumption or operational savings of each facility to which improvements were made. The forms for the reports required by this section shall be furnished by the state treasurer.

(9) An installment contract described in this section may include a lease-purchase agreement, which may be a multiyear contractual obligation that provides for automatic renewal unless positive action is taken by the board of the school district or intermediate school district to terminate that contract. Payments under a lease-purchase agreement are a current operating expense subject to annual appropriations of funds by the board of the school district or intermediate school district and shall obligate the board of the school district or intermediate school district only for those sums payable during the fiscal year of contract execution or any renewal year thereafter. The board of the school district or intermediate school district may make payments under a lease-purchase agreement from any legally available funds or from a combination of energy or operational savings, capital contributions, future replacement costs avoided, or billable revenue enhancements that result from energy conservation improvements or operational improvements to school facilities, if the board of the school district or intermediate school district has determined that those funds are sufficient to cover, in aggregate over the full term of the contractual agreement, the cost of the energy conservation improvements or operational improvements to school facilities. The lease-purchase agreement terminates immediately and absolutely and without further obligation on the part of the board of the school district or intermediate school district at the close of the fiscal year in which it was executed or renewed or at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the board of the school district or intermediate school district under the lease-purchase agreement. During the term of the lease-purchase agreement, the board of the

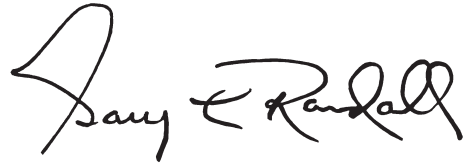
school district or intermediate school district is the vested owner of the energy conservation improvements or operational improvements and may grant a security interest in the energy conservation improvements or operational improvements to the provider of the lease-purchase agreement. The board of the school district or intermediate school district shall not be obligated under a lease-purchase agreement for more than 20 years after either the date of the final completion of the energy conservation improvements or operational improvements to school facilities or the end of the useful life of the aggregate energy conservation improvements or operational improvements to school facilities, whichever occurs first. Upon the termination of the lease-purchase agreement and the satisfaction of the obligations of the board of the school district or intermediate school district, the provider of the lease-purchase agreement shall release its security interest in the energy conservation improvements or operational improvements.

(10) As used in this section:

(a) "Energy saving performance contract" means an agreement for the evaluation, recommendation, and implementation of energy conservation measures or operational improvements including, but not limited to, an energy audit or detailed energy study; the design, installation, operation, and maintenance of 1 or more energy conservation measures; energy management services; and an energy savings guarantee.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor