



House Bill 4386

Sponsor: Rep. William R. Keith

Committee: Education

Complete to 3-5-91

A SUMMARY OF HOUSE BILL 4386 AS INTRODUCED 2-26-91

The bill would amend the School Code to permit school districts, including intermediate school districts, to negotiate energy conservation contracts under certain circumstances. The bill's provisions would supersede, in case of conflict, those in the code governing competitive bidding. Energy conservation measures in the contracts could include insulation; window and door modifications; automatic energy control systems, including licenses for computer software; heating, ventilation, and air-conditioning systems; energy-efficient lighting systems; energy recovery systems; and cogeneration systems. The cost of energy conservation measures under such contracts could not exceed the amount of savings guaranteed by the contracts.

The bill would permit a school districts to obtain competitive proposals for an energy conservation contract or package of contracts and then conduct negotiations with those who make proposals. Proposals could be revised between the time submitted and the time contracts were awarded. When a board advertised for proposals, it would have to specify in the notice the relative importance of guaranteed savings, price, financial performance and stability, quality, technical ability, experience, and other factors to be used in evaluating proposals and those offering proposals. The notice would also have to state that the proposals were subject to negotiation. After the completion of negotiations and proposal revisions, a school board would have to publish a notice of intent to award a contract or package of contracts to whomever was selected in the same manner as they advertised for proposals. A contract or package of contracts could include a lease with an option to purchase if the lease term did not exceed ten years and the contract met federal tax requirements for tax-exempt municipal leasing or long-term financing.

Proposals could be opened in a manner that avoided disclosure of their contents to competitors and that kept their contents secret during negotiations. Proposals would be exempt from the Freedom of Information Act. (If proposals were to be secret, the notice advertising for proposals would have to say so.) All proposals would be open for public inspection after the notice to award was published, although school districts could enter into software licensing agreements and nondisclosure agreements to protect a provider's software and proprietary information. Such software and proprietary information would not be open to public inspection and would be exempt from the Freedom of Information Act.

The bill would permit a school district to enter into energy conservation measures if:

- The provider was found to be experienced in the design, implementation, installation, and maintenance of energy conservation measures.

-- The contract covered a period of ten years or less after installation was complete.

-- The contract contained a guarantee of a minimum amount of money that the district would save in energy or operating costs, or both, including electrical, gas, and other utility costs and a guarantee by the provider to perform necessary services to ensure that at least those savings were realized.

-- The provider filed with the board a performance bond guaranteeing the faithful execution of the contract in an amount at least equal to the savings guarantee and that the board determined to be reasonable and necessary to protect the interests of the district. The bond would have to be effective at least for the term of the savings guarantee.

-- The provider agreed to monitor the results of the measures.

-- The board makes a finding that the amount spent on the measures would not exceed the amount guaranteed to be saved and that the district's contractual obligation in any one year of the contract would not exceed the annual saving guarantee specified in the contract.

The bill would also provide that bonds issued for purposes authorized under the bill would be considered as issued for capital expenditures (including for purposes of the state-loans-to-school-district provisions in the state constitution).

MCL 380.1267