

HOUSE BILL No. 4386

February 26, 1991, Introduced by Reps. Keith, Trim, Middleton, Bryum, Banks and Joe Young, Jr. and referred to the Committee on Education.

A bill to amend section 1267 of Act No. 451 of the Public Acts of 1976, entitled as amended

"The school code of 1976,"

as amended by Act No. 159 of the Public Acts of 1990, being section 380.1267 of the Michigan Compiled Laws; and to add section 1274b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1267 of Act No. 451 of the Public Acts
2 of 1976, as amended by Act No. 159 of the Public Acts of 1990,
3 being section 380.1267 of the Michigan Compiled Laws, is amended
4 and section 1274b is added to read as follows:

5 Sec. 1267. (1) Before commencing construction of a new
6 school building, or addition to or repair or renovation of an
7 existing school building, except repair in emergency situations,
8 the board of a school district other than a first class school

1 district shall obtain competitive bids on all the material and
2 labor required for the complete construction of a proposed new
3 building or addition to or repair or renovation of an existing
4 school building.

5 (2) The board shall advertise for the bids required under
6 subsection (1) once each week for 2 successive weeks in a newspa-
7 per of general circulation in the area where the building or
8 addition is to be constructed or where the repair or renovation
9 of an existing building is to take place.

10 (3) The board shall require each bidder for a contract under
11 this section to file with the board security in an amount not
12 less than 1/20 of the amount of the bid conditioned to secure the
13 school district from loss or damage by reason of the withdrawal
14 of the bid or by the failure of the bidder to enter a contract
15 for performance, if the bid is accepted by the board.

16 (4) ~~All~~ EXCEPT AS OTHERWISE PROVIDED IN SECTION 1274B, ALL
17 bids required under this section shall be opened and read aloud
18 in a public bid meeting at the time and place advertised for the
19 receipt of the bids. The board may reject any or all bids, and
20 if all bids are rejected, shall readvertise in the manner
21 required by this section.

22 (5) This section does not apply to buildings, renovations,
23 or repairs costing less than \$12,500.00 or to repair work nor-
24 mally performed by school district employees. The maximum amount
25 specified in this subsection shall be adjusted each year by
26 multiplying the amount for the immediately preceding year by the
27 percentage by which the average consumer price index for all

1 items for the 12 months ending August 31 of the year in which the
2 adjustment is made differs from that index's average for the
3 12 months ending on August 31 of the immediately preceding year
4 and adding that product to the maximum amount that applied in the
5 immediately preceding year, rounding to the nearest whole
6 dollar.

7 (6) TO THE EXTENT THAT THE PROCEDURES DESCRIBED IN SECTION
8 1274B FOR A CONTRACT OR PACKAGE OF CONTRACTS UNDER THAT SECTION
9 ARE INCONSISTENT WITH THE PROCEDURES REQUIRED UNDER THIS SECTION,
10 SECTION 1274B CONTROLS FOR A CONTRACT UNDER THAT SECTION.

11 SEC. 1274B. (1) IN ADDITION TO THE POWERS SPECIFIED IN SEC-
12 TIONS 1274 AND 1274A, THE BOARD OF A SCHOOL DISTRICT, INTERMEDI-
13 ATE SCHOOL DISTRICT, OR LOCAL ACT SCHOOL DISTRICT MAY ENTER INTO
14 A CONTRACT OR PACKAGE OF CONTRACTS UNDER THIS SECTION FOR ENERGY
15 CONSERVATION MEASURES IF ALL OF THE FOLLOWING REQUIREMENTS ARE
16 MET:

17 (A) THE PROVIDER IS DETERMINED BY THE BOARD TO BE
18 EXPERIENCED IN THE DESIGN, IMPLEMENTATION, INSTALLATION, AND
19 MAINTENANCE OF ENERGY CONSERVATION MEASURES.

20 (B) THE CONTRACT OR PACKAGE OF CONTRACTS COVERS A PERIOD OF
21 NOT MORE THAN 10 YEARS AFTER INSTALLATION IS COMPLETED.

22 (C) THE PROVIDER FILES WITH THE BOARD A PERFORMANCE BOND
23 THAT GUARANTEES THE FAITHFUL EXECUTION OF THE CONTRACT OR PACKAGE
24 OF CONTRACTS IN AN AMOUNT THAT IS AT LEAST EQUAL TO THE SAVINGS
25 GUARANTEE DESCRIBED IN SUBDIVISION (D) AND THAT THE BOARD DETER-
26 MINES TO BE REASONABLE AND NECESSARY TO PROTECT THE INTERESTS OF
27 THE DISTRICT. THE PERFORMANCE BOND SHALL BE EFFECTIVE FOR AT

1 LEAST THE TERM OF THE SAVINGS GUARANTEE DESCRIBED IN
2 SUBDIVISION (D), WHETHER OR NOT THE PROVIDER CONTINUES TO BE IN
3 BUSINESS. THE BOARD MAY ALSO REQUIRE A SEPARATE PERFORMANCE BOND
4 FOR THE INSTALLATION OF THE ENERGY CONSERVATION MEASURES.

5 (D) THE CONTRACT OR PACKAGE OF CONTRACTS CONTAINS A GUARAN-
6 TEE OF A SPECIFIC MINIMUM AMOUNT OF MONEY THAT THE DISTRICT WILL
7 SAVE IN ENERGY OR OPERATING COSTS, OR BOTH, AS A RESULT OF THE
8 CONTRACT, INCLUDING, BUT NOT LIMITED TO, ELECTRICAL, GAS, AND
9 OTHER UTILITY COSTS, AND A GUARANTEE BY THE PROVIDER TO PERFORM
10 THE NECESSARY SERVICE TO ENSURE THAT AT LEAST THOSE SAVINGS ARE
11 REALIZED.

12 (E) THE PROVIDER AGREES TO MONITOR THE RESULTS OF THE ENERGY
13 CONSERVATION MEASURES.

14 (F) THE BOARD FINDS THAT THE AMOUNT THE DISTRICT WILL SPEND
15 ON ENERGY CONSERVATION MEASURES UNDER THE CONTRACT OR PACKAGE OF
16 CONTRACTS WILL NOT EXCEED THE AMOUNT GUARANTEED BY THE CONTRACT
17 OR PACKAGE OF CONTRACTS TO BE SAVED IN ENERGY AND OPERATING COSTS
18 OVER THE CONTRACT PERIOD.

19 (G) THE BOARD FINDS THAT THE DISTRICT'S CONTRACTUAL OBLIGA-
20 TION IN ANY YEAR OF THE CONTRACT OR PACKAGE OF CONTRACTS WILL NOT
21 EXCEED THE ANNUAL SAVINGS GUARANTEE AMOUNT SPECIFIED IN THE CON-
22 TRACT OR PACKAGE OF CONTRACTS.

23 (2) IN MAKING FINDINGS UNDER SUBSECTION (1), A BOARD SHALL
24 CONSIDER ALL COSTS OF THE ENERGY CONSERVATION MEASURES, INCLUD-
25 ING, BUT NOT LIMITED TO, COSTS OF DESIGN, ENGINEERING, INSTALLA-
26 TION, MAINTENANCE, REPAIRS, OPERATIONS, AND DEBT SERVICE.

1 (3) A CONTRACT OR PACKAGE OF CONTRACTS UNDER THIS SECTION
2 MAY INCLUDE A LEASE WITH AN OPTION TO PURCHASE IF THE LEASE TERM
3 DOES NOT EXCEED 10 YEARS AND THE LEASE CONTRACT MEETS FEDERAL TAX
4 REQUIREMENTS FOR TAX-EXEMPT MUNICIPAL LEASING OR LONG-TERM
5 FINANCING.

6 (4) IF A BOARD OBTAINS COMPETITIVE PROPOSALS FOR A CONTRACT
7 OR PACKAGE OF CONTRACTS UNDER THIS SECTION, THE BOARD SHALL
8 ADVERTISE FOR THE PROPOSALS AND SHALL SPECIFY IN THE NOTICE THE
9 RELATIVE IMPORTANCE OF GUARANTEED SAVINGS, PRICE, FINANCIAL PER-
10 FORMANCE AND STABILITY, QUALITY, TECHNICAL ABILITY, EXPERIENCE,
11 AND OTHER FACTORS TO BE USED TO EVALUATE PROPOSALS AND
12 PROPOSERS. THE NOTICE SHALL ALSO STATE THAT THE PROPOSALS ARE
13 SUBJECT TO NEGOTIATION BETWEEN THE DISTRICT AND THE PROPOSER. IF
14 THE BOARD AWARDS A CONTRACT OR PACKAGE OF CONTRACTS, THE CONTRACT
15 OR PACKAGE OF CONTRACTS SHALL BE AWARDED TO THE RESPONSIBLE PRO-
16 POSER WHOSE PROPOSAL, FOLLOWING NEGOTIATIONS UNDER SUBSECTION
17 (5), IS DETERMINED BY THE BOARD TO BE THE MOST ADVANTAGEOUS TO
18 THE DISTRICT CONSIDERING THE SAVINGS GUARANTEE AND OTHER EVALU-
19 ATION FACTORS SPECIFIED IN THE PROPOSAL NOTICE.

20 (5) IN ACCORDANCE WITH THE TERMS OF A PROPOSAL NOTICE UNDER
21 SUBSECTION (4), A BOARD MAY CONDUCT NEGOTIATIONS WITH PROPOSERS
22 WHO SUBMIT PROPOSALS AND ARE DETERMINED BY THE BOARD TO BE REA-
23 SONABLY QUALIFIED FOR THE AWARD OF THE CONTRACT OR PACKAGE OF
24 CONTRACTS AND MAY ALLOW PROPOSAL REVISIONS AFTER SUBMISSION OF
25 PROPOSALS AND BEFORE THE AWARD OF THE CONTRACT OR PACKAGE OF
26 CONTRACTS. AFTER COMPLETION OF NEGOTIATIONS AND PROPOSAL
27 REVISIONS, IF THE BOARD DECIDES TO AWARD A CONTRACT OR PACKAGE OF

1 CONTRACTS, THE BOARD SHALL PUBLISH NOTICE OF INTENT TO AWARD A
2 CONTRACT OR PACKAGE OF CONTRACTS TO THE SELECTED PROPOSER IN THE
3 SAME MANNER AS THE ADVERTISEMENT FOR PROPOSALS.

4 (6) IF PROVIDED IN A PROPOSAL NOTICE UNDER SUBSECTION (4),
5 PROPOSALS SHALL BE OPENED IN A MANNER THAT AVOIDS DISCLOSURE OF
6 THE CONTENTS TO COMPETING PROPOSERS AND KEEPS THE PROPOSALS
7 SECRET DURING NEGOTIATIONS, AND PROPOSALS ARE EXEMPT FROM THE
8 FREEDOM OF INFORMATION ACT, ACT NO. 442 OF THE PUBLIC ACTS OF
9 1976, BEING SECTIONS 15.231 TO 15.246 OF THE MICHIGAN COMPILED
10 LAWS. ALL PROPOSALS SHALL BE OPEN FOR PUBLIC INSPECTION AFTER
11 NOTICE TO AWARD IS PUBLISHED. HOWEVER, SCHOOL DISTRICTS MAY
12 ENTER INTO SOFTWARE LICENSE AGREEMENTS AND NONDISCLOSURE AGREE-
13 MENTS TO PROTECT A PROVIDER'S SOFTWARE AND PROPRIETARY
14 INFORMATION. SOFTWARE OR PROPRIETARY INFORMATION, OR BOTH, THAT
15 IS IDENTIFIED AS PROPRIETARY OR THAT IS THE SUBJECT OF A SOFTWARE
16 LICENSE OR NONDISCLOSURE AGREEMENT IS NOT OPEN FOR PUBLIC INSPEC-
17 TION AND IS EXEMPT FROM ACT NO. 442 OF THE PUBLIC ACTS OF 1976.

18 (7) ISSUANCE OF BONDS FOR THE PURPOSES AUTHORIZED BY THIS
19 SECTION SHALL BE CONSIDERED AS ISSUED FOR CAPITAL EXPENDITURES
20 FOR ALL PURPOSES INCLUDING SECTION 16 OF ARTICLE IX OF THE STATE
21 CONSTITUTION OF 1963.

22 (8) IF ENERGY CONSERVATION MEASURES ARE CONTRACTED BY A
23 BOARD UNDER THIS SECTION, THE BOARD SHALL REPORT THE SAME INFOR-
24 MATION TO THE MICHIGAN PUBLIC SERVICE COMMISSION AS REQUIRED
25 UNDER SECTION 1274A(5) AND (6). THE MICHIGAN PUBLIC SERVICE COM-
26 MISSION SHALL FURNISH THE FORMS FOR THE REPORTS REQUIRED BY THIS
27 SUBSECTION.

(9) AS USED IN THIS SECTION:

(A) "ENERGY CONSERVATION MEASURES" MEANS GOODS OR SERVICES, OR BOTH, TO REDUCE ENERGY CONSUMPTION OR OPERATING COSTS OF SCHOOL FACILITIES AND THAT INCLUDE, BUT ARE NOT LIMITED TO, INSTALLATION OF 1 OR MORE OF THE FOLLOWING:

(i) INSULATION OF A BUILDING STRUCTURE AND SYSTEMS WITHIN A BUILDING.

(ii) STORM WINDOWS OR DOORS, CAULKING OR WEATHERSTRIPPING, MULTIGLAZED WINDOWS OR DOORS, HEAT ABSORBING OR HEAT REFLECTIVE GLAZED AND COATED WINDOW OR DOOR SYSTEMS, OR OTHER WINDOW OR DOOR MODIFICATIONS THAT REDUCE ENERGY CONSUMPTION.

(iii) AUTOMATIC ENERGY CONTROL SYSTEMS, INCLUDING, BUT NOT LIMITED TO, LICENSES FOR COMPUTER SOFTWARE AND TECHNICAL DATA FOR THE SYSTEMS.

(iv) HEATING, VENTILATING, OR AIR-CONDITIONING SYSTEMS, MODIFICATIONS, OR REPLACEMENTS.

(v) LIGHTING FIXTURES THAT INCREASE ENERGY EFFICIENCY.

(vi) ENERGY RECOVERY SYSTEMS.

(vii) COGENERATION SYSTEMS THAT PRODUCE STEAM OR ANOTHER FORM OF ENERGY FOR PRIVATE USE BY THE DISTRICT IN A BUILDING OR COMPLEX OF BUILDINGS OWNED BY THE DISTRICT.

(B) "PROVIDER" MEANS A PERSON WITH WHOM A BOARD CONTRACTS TO PROVIDE ENERGY CONSERVATION MEASURES.