



# HOUSE BILL No. 4634

April 22, 1993, Introduced by Reps. Keith and Bryant and referred to the Committee on Education.

A bill to amend sections 623a, 1267, 1274, and 1274a of Act No. 451 of the Public Acts of 1976, entitled as amended "The school code of 1976," sections 623a, 1267, and 1274 as amended by Act No. 159 of the Public Acts of 1990 and section 1274a as amended by Act No. 227 of the Public Acts of 1990, being sections 380.623a, 380.1267, 380.1274, and 380.1274a of the Michigan Compiled Laws; and to add section 1274b.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 623a, 1267, 1274, and 1274a of Act  
2 No. 451 of the Public Acts of 1976, sections 623a, 1267, and 1274  
3 as amended by Act No. 159 of the Public Acts of 1990 and  
4 section 1274a as amended by Act No. 227 of the Public Acts of  
5 1990, being sections 380.623a, 380.1267, 380.1274, and 380.1274a

1 of the Michigan Compiled Laws, are amended and section 1274b is  
2 added to read as follows:

3       Sec. 623a. An intermediate school board shall adopt written  
4 policies governing the procurement of supplies, materials, and  
5 equipment. ~~An~~ EXCEPT FOR A PERFORMANCE BASED CONTRACT AUTHO-  
6 RIZED UNDER SECTION 1274B OR PACKAGE OF PERFORMANCE BASED CON-  
7 TRACTS AUTHORIZED UNDER SECTION 1274B, AN intermediate school  
8 district shall not purchase an item or a group of items purchased  
9 in a single transaction costing \$12,500.00 or more unless compet-  
10 itive bids are obtained for those items and the purchase of those  
11 items is approved by the intermediate school board. The maximum  
12 amount specified in this section shall be adjusted each year by  
13 multiplying the MAXIMUM amount ~~for~~ THAT APPLIED IN the immedi-  
14 ately preceding year by the percentage by which the average con-  
15 sumer price index for all items for the 12 months ending  
16 August 31 of the year in which the adjustment is made differs  
17 from that CONSUMER PRICE index's average for the 12 months ending  
18 on August 31 of the immediately preceding year and adding that  
19 product to the maximum amount that applied in the immediately  
20 preceding year, rounding to the nearest whole dollar.

21       Sec. 1267. (1) ~~Before~~ EXCEPT FOR A PERFORMANCE BASED CON-  
22 TRACT AUTHORIZED UNDER SECTION 1274B OR PACKAGE OF PERFORMANCE  
23 BASED CONTRACTS AUTHORIZED UNDER SECTION 1274B, BEFORE commencing  
24 construction of a new school building, or addition to or repair  
25 or renovation of an existing school building, except repair in  
26 emergency situations, the board of a school district other than a  
27 first class school district shall obtain competitive bids on all

1 the material and labor required for the complete construction of  
2 a proposed new building or addition to or repair or renovation of  
3 an existing school building.

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

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

15 (4) All bids required under this section shall be opened and  
16 read aloud in a public bid meeting at the time and place adver-  
17 tised for the receipt of the bids. The board may reject any or  
18 all bids ~~—~~ and, if all bids are rejected, shall readvertise in  
19 the manner required by this section.

20 (5) This section does not apply to buildings, renovations,  
21 or repairs costing less than \$12,500.00 or to repair work nor-  
22 mally performed by school district employees. The maximum amount  
23 specified in this subsection shall be adjusted each year by  
24 multiplying the MAXIMUM amount ~~for~~ THAT APPLIED IN the immedi-  
25 ately preceding year by the percentage by which the average con-  
26 sumer price index for all items for the 12 months ending  
27 August 31 of the year in which the adjustment is made differs

1 from that CONSUMER PRICE index's average for the 12 months ending  
2 on August 31 of the immediately preceding year and adding that  
3 product to the maximum amount that applied in the immediately  
4 preceding year, rounding to the nearest whole dollar.

5       Sec. 1274. (1) The board of a school district shall adopt  
6 written policies governing the procurement of supplies, materi-  
7 als, and equipment. ~~-A-~~ EXCEPT FOR A PERFORMANCE BASED CONTRACT  
8 AUTHORIZED UNDER SECTION 1274B OR PACKAGE OF PERFORMANCE BASED  
9 CONTRACTS AUTHORIZED UNDER SECTION 1274B, A school district shall  
10 not purchase an item or a group of items in a single transaction  
11 costing \$12,500.00 or more unless competitive bids are obtained  
12 for those items and the purchase of those items is approved by  
13 the school board. The maximum amount specified in this subsec-  
14 tion shall be adjusted each year by multiplying the MAXIMUM  
15 amount ~~-for-~~ THAT APPLIED IN the immediately preceding year by  
16 the percentage by which the average consumer price index for all  
17 items for the 12 months ending August 31 of the year in which the  
18 adjustment is made differs from that CONSUMER PRICE index's aver-  
19 age for the 12 months ending on August 31 of the immediately pre-  
20 ceding year and adding that product to the maximum amount that  
21 applied in the immediately preceding year, rounding to the near-  
22 est whole dollar.

23       (2) The board of a school district or local act school dis-  
24 trict may acquire by purchase, lease, or rental, with or without  
25 option to purchase, equipment necessary for the operation of the  
26 school program, including, but not limited to, heating, water  
27 heating, and cooking equipment for school buildings, and may pay

1 for the equipment from operating funds of the district. Heating  
2 and cooking equipment may be purchased on a title retaining con-  
3 tract or other form of agreement creating a security interest and  
4 pledging in payment money in the general fund or funds received  
5 from state school aid. The contracts may extend for not more  
6 than 10 years.

7       Sec. 1274a. (1) The board of a school district, intermedi-  
8 ate school district, or local act school district may provide for  
9 energy conservation improvements to be made to school facilities  
10 and may pay for the improvements from operating funds of the  
11 school district or from the proceeds of bonds or notes issued for  
12 energy conservation improvements or may enter into contracts in  
13 which the cost of the energy conservation improvements is paid  
14 from a portion of the savings ~~which~~ THAT result from the  
15 improvements. These contractual agreements may provide that the  
16 costs of improvements will be paid only if the energy savings are  
17 sufficient to cover them. Energy conservation improvements may  
18 include, but are not limited to, heating system improvements,  
19 fenestration improvements, roof improvements, the installation of  
20 any insulation, the installation or repair of heating or air con-  
21 ditioning controls, and entrance or exit way closures.

22       (2) The board of a school district, intermediate school dis-  
23 trict, or local act school district may provide for the removal  
24 or treatment of asbestos or other material injurious to health  
25 for school facilities and may pay for the improvements from oper-  
26 ating funds of the school district or from the proceeds of bonds  
27 or notes issued for such purpose.

1 (3) Issuance of bonds for the purposes authorized by this  
2 section shall be considered as issued for capital expenditures  
3 for all purposes including section 16 of article IX of the state  
4 constitution of 1963.

5 (4) ~~Energy~~ EXCEPT FOR ENERGY CONSERVATION IMPROVEMENTS  
6 THAT ARE ENERGY CONSERVATION MEASURES UNDER A PERFORMANCE BASED  
7 CONTRACT AUTHORIZED UNDER SECTION 1274B OR PACKAGE OF PERFORMANCE  
8 BASED CONTRACTS AUTHORIZED UNDER SECTION 1274B, ENERGY conserva-  
9 tion improvements or substance removal or treatment authorized by  
10 this section ~~shall be~~ ARE subject to the competitive bidding  
11 requirements of section 1267.

12 (5) If energy conservation improvements are made by a school  
13 district or an intermediate school district as provided in this  
14 section, the school board of the school district or ~~an~~ interme-  
15 diate school district shall report the following information to  
16 the Michigan public service commission within 60 days after the  
17 completion of the improvements:

18 (a) Name of each facility to which an improvement was made  
19 and a description of the conservation improvements.

20 (b) Actual energy consumption during the 12-month period  
21 before completion of the improvement.

22 (c) Project costs and expenditures.

23 (d) Estimated annual energy savings.

24 (6) If energy conservation improvements are made as provided  
25 in this section, the school board of the school district or ~~an~~  
26 intermediate school district shall report to the Michigan public  
27 service commission by July 1 of each of the 5 years after the

1 improvements are completed the actual annual energy consumption  
2 of each facility to which improvements were made. The forms for  
3 the reports required by this section shall be furnished by the  
4 Michigan public service commission.

5 SEC. 1274B. (1) IN ADDITION TO THE POWERS SPECIFIED IN SEC-  
6 TIONS 623A, 1274, AND 1274A, THE BOARD OF A SCHOOL DISTRICT,  
7 INTERMEDIATE SCHOOL DISTRICT, OR LOCAL ACT SCHOOL DISTRICT OR A  
8 CONSORTIUM CONSISTING OF ANY OF THOSE MAY ENTER INTO A PER-  
9 FORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS  
10 UNDER THIS SECTION FOR ENERGY CONSERVATION MEASURES. THE BOARD  
11 OF AN INTERMEDIATE SCHOOL DISTRICT MAY ENTER INTO A CONTRACT OR  
12 PACKAGE OF CONTRACTS UNDER THIS SECTION EITHER ON ITS OWN BEHALF  
13 OR ACTING ON BEHALF OF 1 OR MORE OF ITS CONSTITUENT SCHOOL DIS-  
14 TRICTS AT THE REQUEST OF THE CONSTITUENT SCHOOL DISTRICT OR  
15 DISTRICTS. A BOARD OR CONSORTIUM MAY ENTER INTO A PERFORMANCE  
16 BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS WITHOUT  
17 OBTAINING COMPETITIVE PROPOSALS IF ALL OF THE FOLLOWING REQUIRE-  
18 MENTS ARE MET, AND MAY ENTER INTO A PERFORMANCE BASED CONTRACT OR  
19 PACKAGE OF PERFORMANCE BASED CONTRACTS AFTER OBTAINING COMPETI-  
20 TIVE PROPOSALS UNDER SUBSECTION (6) IF ALL OF THE FOLLOWING  
21 REQUIREMENTS EXCEPT SUBDIVISION (A) ARE MET:

22 (A) THE BOARD OR CONSORTIUM OBTAINS FROM THE MICHIGAN PUBLIC  
23 SERVICE COMMISSION NOT EARLIER THAN 1 YEAR BEFORE ENTERING INTO  
24 THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED  
25 CONTRACTS THE LIST OF POTENTIAL ENERGY SERVICES PROVIDERS DEVEL-  
26 OPED UNDER SUBSECTION (11).

1 (B) THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE  
2 BASED CONTRACTS COVERS A PERIOD OF NOT MORE THAN 10 YEARS AFTER  
3 INSTALLATION IS COMPLETED.

4 (C) THE PROVIDER FILES WITH THE BOARD OR CONSORTIUM A PER-  
5 FORMANCE BOND, INSURANCE POLICY, OR OTHER GUARANTY INSTRUMENT  
6 ACCEPTED BY THE DISTRICT AND ISSUED BY A THIRD PARTY INSURER THAT  
7 GUARANTEES THE FAITHFUL EXECUTION OF THE PERFORMANCE BASED CON-  
8 TRACT OR PACKAGE OF PERFORMANCED BASED CONTRACTS IN AN AMOUNT  
9 THAT IS AT LEAST EQUAL TO 110% OF THE COMBINED TOTAL OF THE SAV-  
10 INGS GUARANTEE AMOUNTS DESCRIBED IN SUBDIVISIONS (D) AND (E) AND  
11 THAT THE BOARD OR CONSORTIUM DETERMINES TO BE REASONABLE AND NEC-  
12 ESSARY TO PROTECT THE INTERESTS OF THE DISTRICT OR THE DISTRICTS  
13 IN THE CONSORTIUM. THE PERFORMANCE BOND, INSURANCE POLICY, OR  
14 OTHER GUARANTY INSTRUMENT SHALL BE EFFECTIVE FOR AT LEAST THE  
15 TERM OF THE SAVINGS GUARANTEE AMOUNTS DESCRIBED IN  
16 SUBDIVISIONS (D) AND (E), WHETHER OR NOT THE PROVIDER CONTINUES  
17 TO BE IN BUSINESS. THE BOARD OR CONSORTIUM MAY ALSO REQUIRE A  
18 SEPARATE PERFORMANCE BOND, INSURANCE POLICY, OR OTHER GUARANTY  
19 INSTRUMENT FOR THE INSTALLATION OF THE ENERGY CONSERVATION  
20 MEASURES.

21 (D) THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE  
22 BASED CONTRACTS CONTAINS A WRITTEN GUARANTEE OF A SPECIFIC MINI-  
23 MUM AMOUNT OF MONEY THAT THE DISTRICT OR THE DISTRICTS IN THE  
24 CONSORTIUM WILL SAVE IN ENERGY COSTS AS A RESULT OF THE PER-  
25 FORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CON-  
26 TRACTS, INCLUDING, BUT NOT LIMITED TO, ELECTRICAL, GAS, AND OTHER  
27 UTILITY COSTS, AND A WRITTEN GUARANTEE BY THE PROVIDER TO PERFORM



1 THE NECESSARY SERVICE TO ENSURE THAT AT LEAST THAT AMOUNT OF  
2 SAVINGS IS REALIZED.

3 (E) THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE  
4 BASED CONTRACTS CONTAINS A WRITTEN GUARANTEE OF A SPECIFIC MINI-  
5 MUM AMOUNT OF MONEY THAT THE DISTRICT OR THE DISTRICTS IN THE  
6 CONSORTIUM WILL SAVE IN OPERATING COSTS AS A RESULT OF THE PER-  
7 FORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS  
8 AND A WRITTEN GUARANTEE BY THE PROVIDER TO PERFORM THE NECESSARY  
9 SERVICE TO ENSURE THAT AT LEAST THAT AMOUNT OF SAVINGS IS  
10 REALIZED.

11 (F) THE PROVIDER AGREES TO MONITOR THE RESULTS OF THE ENERGY  
12 CONSERVATION MEASURES.

13 (G) THE BOARD OR CONSORTIUM FINDS THAT THE AMOUNT THE DIS-  
14 TRICT OR THE DISTRICTS IN THE CONSORTIUM WILL SPEND ON ENERGY  
15 CONSERVATION MEASURES UNDER THE PERFORMANCE BASED CONTRACT OR  
16 PACKAGE OF PERFORMANCE BASED CONTRACTS WILL NOT EXCEED 95% OF THE  
17 COMBINED TOTAL OVER THE CONTRACT PERIOD OF THE SAVINGS GUARANTEE  
18 AMOUNTS DESCRIBED IN SUBDIVISIONS (D) AND (E).

19 (H) THE BOARD OR CONSORTIUM FINDS THAT THE DISTRICT'S OR  
20 CONSORTIUM'S CONTRACTUAL OBLIGATION IN ANY YEAR OF THE PER-  
21 FORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS  
22 WILL NOT EXCEED THE ANNUAL SAVINGS GUARANTEE AMOUNTS DESCRIBED IN  
23 SUBDIVISIONS (D) AND (E), AS SPECIFIED IN THE PERFORMANCE BASED  
24 CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS.

25 (2) IN MAKING FINDINGS UNDER SUBSECTION (1), A BOARD OR CON-  
26 SORTIUM SHALL CONSIDER ALL COSTS OF THE ENERGY CONSERVATION  
27 MEASURES, INCLUDING, BUT NOT LIMITED TO, COSTS OF DESIGN,

1 ENGINEERING, INSTALLATION, MAINTENANCE, REPAIRS, OPERATIONS, AND  
2 DEBT SERVICE FOR THE ENERGY CONSERVATION MEASURES.

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

8 (4) IF THE BOARD OF A SCHOOL DISTRICT OTHER THAN A FIRST  
9 CLASS SCHOOL DISTRICT, THE BOARD OF AN INTERMEDIATE SCHOOL DIS-  
10 TRICT, OR A CONSORTIUM ENTERS INTO A PERFORMANCE BASED CONTRACT  
11 OR PACKAGE OF PERFORMANCE BASED CONTRACTS UNDER THIS SECTION IN  
12 AN AMOUNT THAT EXCEEDS THE MAXIMUM AMOUNT UNDER SECTIONS 623A,  
13 1267(5), OR 1274(1), THE PERFORMANCE BASED CONTRACT OR PACKAGE OF  
14 PERFORMANCE BASED CONTRACTS SHALL COMPLY WITH ACT NO. 166 OF THE  
15 PUBLIC ACTS OF 1965, BEING SECTIONS 408.551 TO 408.558 OF THE  
16 MICHIGAN COMPILED LAWS, TO THE SAME EXTENT AS IF THE PROVIDER  
17 WERE SELECTED BY COMPETITIVE BIDDING, WHETHER OR NOT THE BOARD OR  
18 CONSORTIUM ACTUALLY OBTAINED COMPETITIVE PROPOSALS UNDER SUBSEC-  
19 TION (6) FOR THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PER-  
20 FORMANCE BASED CONTRACTS. IF THE BOARD OF A FIRST CLASS SCHOOL  
21 DISTRICT ENTERS INTO A PERFORMANCE BASED CONTRACT OR PACKAGE OF  
22 CONTRACTS UNDER THIS SECTION FOR WHICH IT OBTAINED COMPETITIVE  
23 PROPOSALS UNDER SUBSECTION (6), THE PERFORMANCE BASED CONTRACT OR  
24 PACKAGE OF PERFORMANCE BASED CONTRACTS SHALL COMPLY WITH ACT  
25 NO. 166 OF THE PUBLIC ACTS OF 1965 TO THE SAME EXTENT AS IF THE  
26 PROVIDER WERE SELECTED BY COMPETITIVE BIDDING.

1 (5) IF A BOARD OR CONSORTIUM CHOOSES TO ENTER INTO A  
2 PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED  
3 CONTRACTS UNDER THIS SECTION WITHOUT OBTAINING COMPETITIVE PRO-  
4 POSALS UNDER SUBSECTION (6), ALL INFORMATION PROVIDED TO THE  
5 BOARD OR CONSORTIUM BY THE PROVIDER PERTAINING TO THE PERFORMANCE  
6 BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS SHALL BE  
7 OPEN FOR PUBLIC INSPECTION AFTER THE PERFORMANCE BASED CONTRACT  
8 OR PACKAGE OF PERFORMANCE BASED CONTRACTS IS AWARDED. HOWEVER,  
9 THE BOARD OR CONSORTIUM MAY ENTER INTO A SOFTWARE LICENSE AGREE-  
10 MENT OR NONDISCLOSURE AGREEMENT TO PROTECT A PROVIDER'S SOFTWARE  
11 OR TRADE SECRETS. SOFTWARE OR A TRADE SECRET, OR BOTH, THAT IS  
12 THE SUBJECT OF A SOFTWARE LICENSE OR NONDISCLOSURE AGREEMENT  
13 UNDER THIS SUBSECTION IS NOT OPEN FOR PUBLIC INSPECTION AND IS  
14 EXEMPT FROM THE FREEDOM OF INFORMATION ACT, ACT NO. 442 OF THE  
15 PUBLIC ACTS OF 1976, BEING SECTIONS 15.231 TO 15.246 OF THE  
16 MICHIGAN COMPILED LAWS.

17 (6) IF A BOARD OR CONSORTIUM CHOOSES TO OBTAIN COMPETITIVE  
18 PROPOSALS FOR A PERFORMANCE BASED CONTRACT OR PACKAGE OF PER-  
19 FORMANCE BASED CONTRACTS UNDER THIS SECTION, THE BOARD OR CONSOR-  
20 TIUM SHALL ADVERTISE FOR THE PROPOSALS AND SHALL SPECIFY IN THE  
21 NOTICE THE RELATIVE IMPORTANCE OF GUARANTEED SAVINGS, PRICE,  
22 FINANCIAL PERFORMANCE AND STABILITY, QUALITY, TECHNICAL ABILITY,  
23 EXPERIENCE, AND OTHER FACTORS TO BE USED TO EVALUATE PROPOSALS  
24 AND PROPOSERS. THE NOTICE SHALL STATE WHETHER THE PROPOSALS ARE  
25 SUBJECT TO NEGOTIATION BETWEEN THE PROPOSER AND THE BOARD OR CON-  
26 SORTIUM AFTER THE PROPOSALS ARE OPENED. IF THE BOARD OR  
27 CONSORTIUM AWARDS A PERFORMANCE BASED CONTRACT OR PACKAGE OF

1 PERFORMANCE BASED CONTRACTS AFTER OBTAINING COMPETITIVE  
2 PROPOSALS, THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PER-  
3 FORMANCE BASED CONTRACTS SHALL BE AWARDED TO THE PROPOSER WHOSE  
4 PROPOSAL, FOLLOWING NEGOTIATIONS UNDER SUBSECTION (7), IS  
5 SELECTED BY THE BOARD OR CONSORTIUM CONSIDERING THE SAVINGS GUAR-  
6 ANTEES AND OTHER EVALUATION FACTORS SPECIFIED IN THE PROPOSAL  
7 NOTICE.

8 (7) IF A PROPOSAL NOTICE UNDER SUBSECTION (6) STATED THAT  
9 PROPOSALS ARE SUBJECT TO NEGOTIATION AFTER THE PROPOSALS ARE  
10 OPENED, A BOARD OR CONSORTIUM MAY NEGOTIATE WITH PROPOSERS AFTER  
11 PROPOSALS ARE OPENED AND MAY ALLOW PROPOSAL REVISIONS BEFORE THE  
12 AWARD OF THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE  
13 BASED CONTRACTS.

14 (8) IF PROVIDED IN A PROPOSAL NOTICE UNDER SUBSECTION (6),  
15 PROPOSALS SHALL BE OPENED IN A MANNER THAT AVOIDS DISCLOSURE OF  
16 TRADE SECRETS TO COMPETING PROPOSERS DURING NEGOTIATIONS. ALL  
17 PROPOSALS SHALL BE OPEN FOR PUBLIC INSPECTION AFTER THE PER-  
18 FORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS  
19 IS AWARDED. HOWEVER, THE BOARD OR CONSORTIUM MAY ENTER INTO A  
20 SOFTWARE LICENSE AGREEMENT OR NONDISCLOSURE AGREEMENT TO PROTECT  
21 A PROVIDER'S SOFTWARE OR TRADE SECRETS. SOFTWARE OR A TRADE  
22 SECRET, OR BOTH, THAT IS THE SUBJECT OF A SOFTWARE LICENSE OR  
23 NONDISCLOSURE AGREEMENT UNDER THIS SUBSECTION IS NOT OPEN FOR  
24 PUBLIC INSPECTION AND IS EXEMPT FROM THE FREEDOM OF INFORMATION  
25 ACT, ACT NO. 442 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS  
26 15.231 TO 15.246 OF THE MICHIGAN COMPILED LAWS.

1 (9) A BOARD OR CONSORTIUM MAY PAY FOR A PERFORMANCE BASED  
2 CONTRACT OR PACKAGE OF CONTRACTS UNDER THIS SECTION FROM  
3 OPERATING FUNDS OF THE DISTRICT OR THE DISTRICTS IN THE CONSOR-  
4 TIUM OR FROM THE PROCEEDS OF BONDS OR NOTES ISSUED FOR ENERGY  
5 CONSERVATION MEASURES. ISSUANCE OF BONDS FOR THE PURPOSES AUTHO-  
6 RIZED BY THIS SECTION SHALL BE CONSIDERED AS ISSUED FOR CAPITAL  
7 EXPENDITURES FOR ALL PURPOSES INCLUDING SECTION 16 OF ARTICLE IX  
8 OF THE STATE CONSTITUTION OF 1963.

9 (10) IF ENERGY CONSERVATION MEASURES ARE CONTRACTED BY A  
10 BOARD OR CONSORTIUM UNDER THIS SECTION, THE BOARD OR CONSORTIUM  
11 SHALL REPORT THE SAME INFORMATION TO THE MICHIGAN PUBLIC SERVICE  
12 COMMISSION AS REQUIRED UNDER SECTION 1274A(5) AND (6). THE  
13 MICHIGAN PUBLIC SERVICE COMMISSION SHALL FURNISH THE FORMS FOR  
14 THE REPORTS REQUIRED BY THIS SUBSECTION.

15 (11) THE MICHIGAN PUBLIC SERVICE COMMISSION SHALL DEVELOP  
16 AND MAINTAIN A LIST OF POTENTIAL ENERGY SERVICES PROVIDERS TO BE  
17 MADE AVAILABLE TO DISTRICTS AND CONSORTIA THAT ENTER INTO A PER-  
18 FORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS  
19 UNDER THIS SECTION WITHOUT SEEKING COMPETITIVE PROPOSALS UNDER  
20 SUBSECTION (6). THE MICHIGAN PUBLIC SERVICE COMMISSION IS NOT  
21 LIABLE FOR INACCURACIES IN THE LIST OF POTENTIAL ENERGY SERVICES  
22 PROVIDERS. THE LIST OF POTENTIAL ENERGY SERVICES PROVIDERS IS  
23 INTENDED AND SHALL BE USED ONLY FOR INFORMATIONAL PURPOSES AND  
24 SHALL CONTAIN A DISCLAIMER STATING THAT THE LIST DOES NOT INDI-  
25 CATE A POTENTIAL PROVIDER'S COMPETENCE TO PERFORM ENERGY CONSER-  
26 VATION MEASURES. UPON REQUEST, THE MICHIGAN PUBLIC SERVICE  
27 COMMISSION IMMEDIATELY SHALL MAKE AVAILABLE TO ANYONE THE NAMES

1 AND ADDRESSES OF DISTRICTS, CONSORTIA, AND OTHER PERSONS  
2 REQUESTING A COPY OF THE LIST OF POTENTIAL ENERGY SERVICES PRO-  
3 VIDERS IN THE 12 MONTHS IMMEDIATELY PRECEDING THE REQUEST. IN  
4 DEVELOPING AND MAINTAINING THE LIST OF POTENTIAL ENERGY SERVICES  
5 PROVIDERS, THE MICHIGAN PUBLIC SERVICE COMMISSION SHALL DO ALL OF  
6 THE FOLLOWING:

7 (A) DETERMINE SPECIFIC ENERGY CONSERVATION MEASURES THAT ARE  
8 PART OF PERFORMANCE BASED CONTRACTS AND FOR EACH ENERGY CONSERVA-  
9 TION MEASURE INDICATE WHICH POTENTIAL ENERGY SERVICES PROVIDERS  
10 ON THE LIST ARE WILLING TO PROVIDE IT.

11 (B) ESTABLISH AND IMPLEMENT PROCEDURES FOR INCLUDING IN THE  
12 LIST ALL POTENTIAL ENERGY SERVICES PROVIDERS WHO WISH TO BE  
13 INCLUDED IN THE LIST.

14 (C) ESTABLISH AND IMPLEMENT PROCEDURES FOR ADDING A POTEN-  
15 TIAL ENERGY SERVICES PROVIDER TO THE LIST UPON REQUEST AND FOR  
16 AMENDING THE LIST AS REQUESTED BY A POTENTIAL ENERGY SERVICES  
17 PROVIDER REGARDING THE ENERGY SERVICES THE POTENTIAL PROVIDER IS  
18 WILLING TO PROVIDE.

19 (D) AUTOMATICALLY REMOVE FROM THE LIST ANY POTENTIAL ENERGY  
20 SERVICES PROVIDER WHO DOES NOT REQUEST AT LEAST ONCE EVERY  
21 24 MONTHS TO BE KEPT ON THE LIST.

22 (E) ESTABLISH AND IMPLEMENT PROCEDURES FOR MAKING THE LIST  
23 IMMEDIATELY AVAILABLE TO ANYONE UPON REQUEST.

24 (12) AS USED IN THIS SECTION:

25 (A) "ENERGY CONSERVATION MEASURES" MEANS GOODS OR SERVICES,  
26 OR BOTH, TO REDUCE ENERGY CONSUMPTION OR OPERATING COSTS OF

1 SCHOOL FACILITIES AND THAT INCLUDE, BUT ARE NOT LIMITED TO,  
2 INSTALLATION OR SERVICING OF 1 OR MORE OF THE FOLLOWING:

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

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

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

12 (iv) HEATING, VENTILATING, OR AIR-CONDITIONING SYSTEMS, MOD-  
13 IFICATIONS, OR REPLACEMENTS.

14 (v) LIGHTING FIXTURES THAT INCREASE ENERGY EFFICIENCY.

15 (vi) ENERGY RECOVERY SYSTEMS.

16 (vii) COGENERATION SYSTEMS THAT PRODUCE STEAM OR ANOTHER  
17 FORM OF ENERGY FOR PRIVATE USE BY THE DISTRICT OR CONSORTIUM IN A  
18 BUILDING OR COMPLEX OF BUILDINGS OWNED BY THE DISTRICT OR A DIS-  
19 TRICT WITHIN THE CONSORTIUM.

20 (B) "PERFORMANCE BASED CONTRACT" MEANS AN AGREEMENT UNDER  
21 WHICH A PROVIDER, IN RETURN FOR PAYMENTS BY THE DISTRICT OR CON-  
22 SORTIUM, PROVIDES ENERGY CONSERVATION MEASURES TO A DISTRICT OR  
23 CONSORTIUM OF DISTRICTS AND IN SO DOING GUARANTEES SPECIFIC  
24 LEVELS OF COMFORT AND GUARANTEES THAT THE TOTAL COSTS FOR PROJECT  
25 DESIGN, EQUIPMENT, SERVICING, AND FINANCING WILL NOT EXCEED THE  
26 SAVINGS REALIZED OVER THE TERM OF THE AGREEMENT.

1 (C) "PROVIDER" MEANS A PERSON WITH WHOM A BOARD OR  
2 CONSORTIUM ENTERS INTO A PERFORMANCE BASED CONTRACT OR PACKAGE OF  
3 PERFORMANCE BASED CONTRACTS.

4 (D) "TRADE SECRET" MEANS A CONFIDENTIAL FORMULA, PATTERN,  
5 DEVICE, OR COMPILATION OF INFORMATION THAT IS USED IN THE  
6 PROVIDER'S OR PROPOSER'S BUSINESS AND THAT GIVES THE PROVIDER OR  
7 PROPOSER AN OPPORTUNITY TO OBTAIN ADVANTAGE OVER COMPETITORS WHO  
8 DO NOT KNOW OR USE IT.