

HOUSE BILL No. 4384

February 26, 1997, Introduced by Rep. Griffin and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled
"The revised school code,"
by amending sections 623a, 1267, 1274, and 1274a (MCL 380.623a,
380.1267, 380.1274, and 380.1274a), section 623a as amended by
1990 PA 159, section 1267 as amended by 1995 PA 289, section 1274
as amended by 1994 PA 416, and section 1274a as amended by 1990
PA 227, and by adding section 1274b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 623a. An intermediate school board shall adopt written
2 policies governing the procurement of supplies, materials, and
3 equipment. ~~An~~ EXCEPT FOR A PERFORMANCE BASED CONTRACT AUTHO-
4 RIZED UNDER SECTION 1274B OR PACKAGE OF PERFORMANCE BASED CON-
5 TRACTS AUTHORIZED UNDER SECTION 1274B, AN intermediate school
6 district shall not purchase an item or a group of items purchased
7 in a single transaction costing \$12,500.00 or more unless

1 competitive bids are obtained for those items and the purchase of
2 those items is approved by the intermediate school board. The
3 maximum amount specified in this section shall be adjusted each
4 year by multiplying the MAXIMUM amount ~~for~~ THAT APPLIED IN the
5 immediately preceding year by the percentage by which the average
6 consumer price index for all items for the 12 months ending
7 August 31 of the year in which the adjustment is made differs
8 from that CONSUMER PRICE index's average for the 12 months ending
9 on August 31 of the immediately preceding year and adding that
10 product to the maximum amount that applied in the immediately
11 preceding year, rounding to the nearest whole dollar.

12 Sec. 1267. (1) ~~Before~~ EXCEPT FOR A PERFORMANCE BASED CON-
13 TRACT AUTHORIZED UNDER SECTION 1274B OR PACKAGE OF PERFORMANCE
14 BASED CONTRACTS AUTHORIZED UNDER SECTION 1274B, BEFORE commencing
15 construction of a new school building, or addition to or repair
16 or renovation of an existing school building, except repair in
17 emergency situations, the board of a school district or board of
18 directors of a public school academy, shall obtain competitive
19 bids on all the material and labor required for the complete con-
20 struction of a proposed new building or addition to or repair or
21 renovation of an existing school building.

22 (2) The board or board of directors shall advertise for the
23 bids required under subsection (1) once each week for 2 succes-
24 sive weeks in a newspaper of general circulation in the area
25 where the building or addition is to be constructed or where the
26 repair or renovation of an existing building is to take place.
27 The advertisement for bids shall do all of the following:

1 (a) Specify the date and time by which all bids must be
2 received by the board or board of directors.

3 (b) State that the board or board of directors will not con-
4 sider or accept a bid received by the board or board of directors
5 after the date and time specified for bid submission.

6 (c) Identify the time, date, and place of a public meeting
7 at which the board or board of directors or its designee will
8 open and read aloud each bid received by the board or board of
9 directors by the date and time specified in subdivision (a).

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

17 (4) The board or board of directors shall not open, consid-
18 er, or accept a bid that the board or board of directors receives
19 after the date and time specified for bid submission in the
20 advertisement for bids described in subsection (2).

21 (5) At a public meeting identified in the advertisement for
22 bids described in subsection (2), the board or board of directors
23 or its designee shall open and read aloud each bid that the board
24 or board of directors received at or before the time and date for
25 bid submission specified in the advertisement for bids. The
26 board or board of directors may reject any or all bids, and if

1 all bids are rejected, shall readvertise in the manner required
2 by this section.

3 (6) This section does not apply to buildings, renovations,
4 or repairs costing less than \$12,500.00 or to repair work nor-
5 mally performed by school district employees. The maximum amount
6 specified in this subsection shall be adjusted each year by
7 multiplying the MAXIMUM amount ~~for~~ THAT APPLIED IN the immedi-
8 ately preceding year by the percentage by which the average con-
9 sumer price index for all items for the 12 months ending
10 August 31 of the year in which the adjustment is made differs
11 from that CONSUMER PRICE index's average for the 12 months ending
12 on August 31 of the immediately preceding year and adding that
13 product to the maximum amount that applied in the immediately
14 preceding year, rounding to the nearest whole dollar.

15 Sec. 1274. (1) The board of a school district or board of
16 directors of a public school academy shall adopt written policies
17 governing the procurement of supplies, materials, and equipment.
18 ~~—A—~~ EXCEPT FOR A PERFORMANCE BASED CONTRACT AUTHORIZED UNDER SEC-
19 TION 1274B OR PACKAGE OF PERFORMANCE BASED CONTRACTS AUTHORIZED
20 UNDER SECTION 1274B, A school district or public school academy
21 shall not purchase an item or a group of items in a single trans-
22 action costing \$12,500.00 or more unless competitive bids are
23 obtained for those items and the purchase of those items is
24 approved by the school board or board of directors. The maximum
25 amount specified in this subsection shall be adjusted each year
26 by multiplying the MAXIMUM amount ~~for~~ THAT APPLIED IN the
27 immediately preceding year by the percentage by which the average

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

7 (2) The board of a school district or local act school dis-
8 trict or board of directors of a public school academy may
9 acquire by purchase, lease, or rental, with or without option to
10 purchase, equipment necessary for the operation of the school
11 program, including, but not limited to, heating, water heating,
12 and cooking equipment for school buildings, and may pay for the
13 equipment from operating funds of the district or public school
14 academy. Heating and cooking equipment may be purchased on a
15 title retaining contract or other form of agreement creating a
16 security interest and pledging in payment money in the general
17 fund or funds received from state school aid. The contracts may
18 extend for not more than 10 years.

19 Sec. 1274a. (1) The board of a school district, intermedi-
20 ate school district, PUBLIC SCHOOL ACADEMY, or local act school
21 district may provide for energy conservation improvements to be
22 made to school facilities and may pay for the improvements from
23 operating funds of the school district OR PUBLIC SCHOOL ACADEMY
24 or from the proceeds of bonds or notes issued for energy conser-
25 vation improvements or may enter into contracts in which the cost
26 of the energy conservation improvements is paid from a portion of
27 the savings ~~which~~ THAT result from the improvements. These

1 contractual agreements may provide that the costs of improvements
2 will be paid only if the energy savings are sufficient to cover
3 them. Energy conservation improvements may include, but are not
4 limited to, heating system improvements, fenestration improve-
5 ments, roof improvements, the installation of any insulation, the
6 installation or repair of heating or air conditioning controls,
7 and entrance or exit way closures.

8 (2) The board of a school district, intermediate school dis-
9 trict, PUBLIC SCHOOL ACADEMY, or local act school district may
10 provide for the removal or treatment of asbestos or other mate-
11 rial injurious to health for school facilities and may pay for
12 the improvements from operating funds of the school district OR
13 PUBLIC SCHOOL ACADEMY or from the proceeds of bonds or notes
14 issued for such purpose.

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

19 (4) ~~Energy~~ EXCEPT FOR ENERGY CONSERVATION IMPROVEMENTS
20 THAT ARE ENERGY CONSERVATION MEASURES UNDER A PERFORMANCE BASED
21 CONTRACT AUTHORIZED UNDER SECTION 1274B OR PACKAGE OF PERFORMANCE
22 BASED CONTRACTS AUTHORIZED UNDER SECTION 1274B, ENERGY conserva-
23 tion improvements or substance removal or treatment authorized by
24 this section ~~shall be~~ ARE subject to the competitive bidding
25 requirements of section 1267.

26 (5) If energy conservation improvements are made by a school
27 district, ~~or an~~ PUBLIC SCHOOL ACADEMY, OR intermediate school

1 district as provided in this section, the ~~school~~ board of the
2 school district, PUBLIC SCHOOL ACADEMY, or ~~an~~ intermediate
3 school district shall report the following information to the
4 Michigan public service commission within 60 days after the com-
5 pletion of the improvements:

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

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

10 (c) Project costs and expenditures.

11 (d) Estimated annual energy savings.

12 (6) If energy conservation improvements are made as provided
13 in this section, the ~~school~~ board of the school district,
14 PUBLIC SCHOOL ACADEMY, or ~~an~~ intermediate school district shall
15 report to the Michigan public service commission by July 1 of
16 each of the 5 years after the improvements are completed the
17 actual annual energy consumption of each facility to which
18 improvements were made. The forms for the reports required by
19 this section shall be furnished by the Michigan public service
20 commission.

21 SEC. 1274B. (1) IN ADDITION TO THE POWERS SPECIFIED IN SEC-
22 TIONS 623A, 1274, AND 1274A, THE BOARD OF A SCHOOL DISTRICT,
23 PUBLIC SCHOOL ACADEMY, INTERMEDIATE SCHOOL DISTRICT, OR LOCAL ACT
24 SCHOOL DISTRICT OR A CONSORTIUM CONSISTING OF ANY OF THOSE MAY
25 ENTER INTO A PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE
26 BASED CONTRACTS UNDER THIS SECTION FOR ENERGY CONSERVATION
27 MEASURES. THE BOARD OF AN INTERMEDIATE SCHOOL DISTRICT MAY ENTER

1 INTO A CONTRACT OR PACKAGE OF CONTRACTS UNDER THIS SECTION EITHER
2 ON ITS OWN BEHALF OR ACTING ON BEHALF OF 1 OR MORE OF ITS CON-
3 STITUENT SCHOOL DISTRICTS AT THE REQUEST OF THE CONSTITUENT
4 SCHOOL DISTRICT OR DISTRICTS. A BOARD OR CONSORTIUM MAY ENTER
5 INTO A PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED
6 CONTRACTS WITHOUT OBTAINING COMPETITIVE PROPOSALS IF ALL OF THE
7 FOLLOWING REQUIREMENTS ARE MET, AND MAY ENTER INTO A PERFORMANCE
8 BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS AFTER
9 OBTAINING COMPETITIVE PROPOSALS UNDER SUBSECTION (5) IF ALL OF
10 THE FOLLOWING REQUIREMENTS EXCEPT SUBDIVISIONS (A) AND (B) ARE
11 MET:

12 (A) THE BOARD OR CONSORTIUM OBTAINS FROM THE MICHIGAN PUBLIC
13 SERVICE COMMISSION NOT EARLIER THAN 1 YEAR BEFORE ENTERING INTO
14 THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED
15 CONTRACTS THE LIST OF POTENTIAL ENERGY SERVICES PROVIDERS DEVEL-
16 OPED UNDER SUBSECTION (10).

17 (B) AT LEAST 14 DAYS BEFORE ENTERING INTO THE PERFORMANCE
18 BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS, THE
19 BOARD OR CONSORTIUM SHALL PUBLISH IN A NEWSPAPER OF GENERAL CIR-
20 CULATION IN THE COUNTY, AND SHALL FILE WITH THE MICHIGAN PUBLIC
21 SERVICE COMMISSION, A NOTICE THAT THE BOARD OR CONSORTIUM IS
22 INTERESTED IN CONTRACTING FOR ENERGY CONSERVATION MEASURES
23 THROUGH A PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE
24 BASED CONTRACTS, THAT PERSONS WHO MAY BE INTERESTED IN PROVIDING
25 THOSE SERVICES MAY CONTACT THAT BOARD OR CONSORTIUM BY A SPECI-
26 FIED DATE, AND SPECIFYING THE NAME AND BUSINESS ADDRESS OF THE
27 PERSON TO BE CONTACTED.

1 (C) 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 (D) 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 PERFORMANCE BASED CONTRACTS IN AN AMOUNT THAT
9 IS AT LEAST EQUAL TO 110% OF THE COMBINED TOTAL OF THE SAVINGS
10 GUARANTEE AMOUNTS DESCRIBED IN SUBDIVISIONS (E) AND (F) AND THAT
11 THE BOARD OR CONSORTIUM DETERMINES TO BE REASONABLE AND NECESSARY
12 TO PROTECT THE INTERESTS OF THE DISTRICT, PUBLIC SCHOOL ACADEMY,
13 OR THE DISTRICTS IN THE CONSORTIUM. THE PERFORMANCE BOND, INSUR-
14 ANCE POLICY, OR OTHER GUARANTY INSTRUMENT SHALL BE EFFECTIVE FOR
15 AT LEAST THE TERM OF THE SAVINGS GUARANTEE AMOUNTS DESCRIBED IN
16 SUBDIVISIONS (E) AND (F). THE BOARD OR CONSORTIUM MAY ALSO
17 REQUIRE A SEPARATE PERFORMANCE BOND, INSURANCE POLICY, OR OTHER
18 GUARANTY INSTRUMENT FOR THE INSTALLATION OF THE ENERGY CONSERVA-
19 TION MEASURES.

20 (E) THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE
21 BASED CONTRACTS CONTAINS A WRITTEN GUARANTEE OF A SPECIFIC MINI-
22 MUM AMOUNT OF MONEY THAT THE DISTRICT, PUBLIC SCHOOL ACADEMY, OR
23 THE DISTRICTS IN THE CONSORTIUM WILL SAVE IN ENERGY COSTS AS A
24 RESULT OF THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PER-
25 FORMANCE BASED CONTRACTS, INCLUDING, BUT NOT LIMITED TO, ELECTRI-
26 CAL, GAS, AND OTHER UTILITY COSTS, AND A WRITTEN GUARANTEE BY THE

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

3 (F) 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, PUBLIC SCHOOL ACADEMY, OR
6 THE DISTRICTS IN THE CONSORTIUM WILL SAVE IN OPERATING COSTS AS A
7 RESULT OF THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PER-
8 FORMANCE BASED CONTRACTS AND A WRITTEN GUARANTEE BY THE PROVIDER
9 TO PERFORM THE NECESSARY SERVICE TO ENSURE THAT AT LEAST THAT
10 AMOUNT OF SAVINGS IS REALIZED.

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

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

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

26 (2) IN MAKING FINDINGS UNDER SUBSECTION (1), A BOARD OR
27 CONSORTIUM SHALL COSTS OF THE ENERGY CONSERVATION

1 MEASURES, CONSIDER ALL INCLUDING, BUT NOT LIMITED TO, COSTS OF
2 DESIGN, ENGINEERING, INSTALLATION, MAINTENANCE, REPAIRS, OPERA-
3 TIONS, AND DEBT SERVICE FOR THE ENERGY CONSERVATION MEASURES.

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

9 (4) IF A BOARD OR CONSORTIUM CHOOSES TO ENTER INTO A PER-
10 FORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS
11 UNDER THIS SECTION WITHOUT OBTAINING COMPETITIVE PROPOSALS UNDER
12 SUBSECTION (5), ALL INFORMATION PROVIDED TO THE BOARD OR CONSOR-
13 TIUM BY THE PROVIDER PERTAINING TO THE PERFORMANCE BASED CONTRACT
14 OR PACKAGE OF PERFORMANCE BASED CONTRACTS SHALL BE OPEN FOR
15 PUBLIC INSPECTION AFTER THE PERFORMANCE BASED CONTRACT OR PACKAGE
16 OF PERFORMANCE BASED CONTRACTS IS AWARDED. HOWEVER, THE BOARD OR
17 CONSORTIUM MAY ENTER INTO A SOFTWARE LICENSE AGREEMENT OR NONDIS-
18 CLOSURE AGREEMENT TO PROTECT A PROVIDER'S SOFTWARE OR TRADE
19 SECRETS. SOFTWARE OR A TRADE SECRET, OR BOTH, THAT IS THE
20 SUBJECT OF A SOFTWARE LICENSE OR NONDISCLOSURE AGREEMENT UNDER
21 THIS SUBSECTION IS NOT OPEN FOR PUBLIC INSPECTION AND IS EXEMPT
22 FROM THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO
23 15.246.

24 (5) IF A BOARD OR CONSORTIUM CHOOSES TO OBTAIN COMPETITIVE
25 PROPOSALS FOR A PERFORMANCE BASED CONTRACT OR PACKAGE OF PER-
26 FORMANCE BASED CONTRACTS UNDER THIS SECTION, THE BOARD OR
27 CONSORTIUM SHALL ADVERTISE FOR THE PROPOSALS AND SHALL SPECIFY IN

1 THE NOTICE THE RELATIVE IMPORTANCE OF GUARANTEED SAVINGS, PRICE,
2 FINANCIAL PERFORMANCE AND STABILITY, QUALITY, TECHNICAL ABILITY,
3 EXPERIENCE, AND OTHER FACTORS TO BE USED TO EVALUATE PROPOSALS
4 AND PROPOSERS. THE NOTICE SHALL STATE WHETHER THE PROPOSALS ARE
5 SUBJECT TO NEGOTIATION BETWEEN THE PROPOSER AND THE BOARD OR CON-
6 SORTIUM AFTER THE PROPOSALS ARE OPENED. IF THE BOARD OR CONSOR-
7 TIUM AWARDS A PERFORMANCE BASED CONTRACT OR PACKAGE OF PER-
8 FORMANCE BASED CONTRACTS AFTER OBTAINING COMPETITIVE PROPOSALS,
9 THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED
10 CONTRACTS SHALL BE AWARDED TO THE PROPOSER WHOSE PROPOSAL, FOL-
11 LOWING NEGOTIATIONS UNDER SUBSECTION (6), IS SELECTED BY THE
12 BOARD OR CONSORTIUM CONSIDERING THE SAVINGS GUARANTEES AND OTHER
13 EVALUATION FACTORS SPECIFIED IN THE PROPOSAL NOTICE.

14 (6) IF A PROPOSAL NOTICE UNDER SUBSECTION (5) STATED THAT
15 PROPOSALS ARE SUBJECT TO NEGOTIATION AFTER THE PROPOSALS ARE
16 OPENED, A BOARD OR CONSORTIUM MAY NEGOTIATE WITH PROPOSERS AFTER
17 PROPOSALS ARE OPENED AND MAY ALLOW PROPOSAL REVISIONS BEFORE THE
18 AWARD OF THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE
19 BASED CONTRACTS.

20 (7) IF PROVIDED IN A PROPOSAL NOTICE UNDER SUBSECTION (5),
21 PROPOSALS SHALL BE OPENED IN A MANNER THAT AVOIDS DISCLOSURE OF
22 TRADE SECRETS TO COMPETING PROPOSERS DURING NEGOTIATIONS. ALL
23 PROPOSALS SHALL BE OPEN FOR PUBLIC INSPECTION AFTER THE PER-
24 FORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS
25 IS AWARDED. HOWEVER, THE BOARD OR CONSORTIUM MAY ENTER INTO A
26 SOFTWARE LICENSE AGREEMENT OR NONDISCLOSURE AGREEMENT TO PROTECT
27 A PROVIDER'S SOFTWARE OR TRADE SECRETS. SOFTWARE OR A TRADE

1 SECRET, OR BOTH, THAT IS THE SUBJECT OF A SOFTWARE LICENSE OR
2 NONDISCLOSURE AGREEMENT UNDER THIS SUBSECTION IS NOT OPEN FOR
3 PUBLIC INSPECTION AND IS EXEMPT FROM THE FREEDOM OF INFORMATION
4 ACT, 1976 PA 442, MCL 15.231 TO 15.246.

5 (8) A BOARD OR CONSORTIUM MAY PAY FOR A PERFORMANCE BASED
6 CONTRACT OR PACKAGE OF CONTRACTS UNDER THIS SECTION FROM OPERAT-
7 ING FUNDS OF THE DISTRICT, THE PUBLIC SCHOOL ACADEMY, OR THE DIS-
8 TRICTS IN THE CONSORTIUM OR FROM THE PROCEEDS OF BONDS OR NOTES
9 ISSUED FOR ENERGY CONSERVATION MEASURES. ISSUANCE OF BONDS FOR
10 THE PURPOSES AUTHORIZED BY THIS SECTION SHALL BE CONSIDERED AS
11 ISSUED FOR CAPITAL EXPENDITURES FOR ALL PURPOSES INCLUDING SEC-
12 TION 16 OF ARTICLE IX OF THE STATE CONSTITUTION OF 1963.

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

19 (10) THE MICHIGAN PUBLIC SERVICE COMMISSION SHALL DEVELOP
20 AND MAINTAIN A LIST OF POTENTIAL ENERGY SERVICES PROVIDERS TO BE
21 MADE AVAILABLE TO DISTRICTS, PUBLIC SCHOOL ACADEMIES, AND CONSOR-
22 TIA THAT ENTER INTO A PERFORMANCE BASED CONTRACT OR PACKAGE OF
23 PERFORMANCE BASED CONTRACTS UNDER THIS SECTION WITHOUT SEEKING
24 COMPETITIVE PROPOSALS UNDER SUBSECTION (5). THE MICHIGAN PUBLIC
25 SERVICE COMMISSION IS NOT LIABLE FOR INACCURACIES IN THE LIST OF
26 POTENTIAL ENERGY SERVICES PROVIDERS. THE LIST OF POTENTIAL
27 ENERGY SERVICES PROVIDERS IS INTENDED AND SHALL BE USED ONLY FOR

1 INFORMATIONAL PURPOSES AND SHALL CONTAIN A DISCLAIMER STATING
2 THAT THE LIST DOES NOT INDICATE A POTENTIAL PROVIDER'S COMPETENCE
3 TO PERFORM ENERGY CONSERVATION MEASURES. UPON REQUEST, THE
4 MICHIGAN PUBLIC SERVICE COMMISSION IMMEDIATELY SHALL MAKE AVAIL-
5 ABLE TO ANYONE THE NAMES AND ADDRESSES OF DISTRICTS, PUBLIC
6 SCHOOL ACADEMIES, CONSORTIA, AND OTHER PERSONS REQUESTING A COPY
7 OF THE LIST OF POTENTIAL ENERGY SERVICES PROVIDERS IN THE
8 12 MONTHS IMMEDIATELY PRECEDING THE REQUEST. IN DEVELOPING AND
9 MAINTAINING THE LIST OF POTENTIAL ENERGY SERVICES PROVIDERS, THE
10 MICHIGAN PUBLIC SERVICE COMMISSION SHALL DO ALL OF THE
11 FOLLOWING:

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

16 (B) ESTABLISH AND IMPLEMENT PROCEDURES FOR INCLUDING IN THE
17 LIST ALL POTENTIAL ENERGY SERVICES PROVIDERS WHO WISH TO BE
18 INCLUDED IN THE LIST.

19 (C) ESTABLISH AND IMPLEMENT PROCEDURES FOR ADDING A POTEN-
20 TIAL ENERGY SERVICES PROVIDER TO THE LIST UPON REQUEST AND FOR
21 AMENDING THE LIST AS REQUESTED BY A POTENTIAL ENERGY SERVICES
22 PROVIDER REGARDING THE ENERGY SERVICES THE POTENTIAL PROVIDER IS
23 WILLING TO PROVIDE.

24 (D) AUTOMATICALLY REMOVE FROM THE LIST ANY POTENTIAL ENERGY
25 SERVICES PROVIDER WHO DOES NOT REQUEST AT LEAST ONCE EVERY
26 24 MONTHS TO BE KEPT ON THE LIST.

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

3 (11) AS USED IN THIS SECTION:

4 (A) "BOARD" INCLUDES THE BOARD OF A PUBLIC SCHOOL ACADEMY.

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

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

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

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

18 (iv) HEATING, VENTILATING, OR AIR-CONDITIONING SYSTEMS, MOD-
19 IFICATIONS, OR REPLACEMENTS.

20 (v) LIGHTING FIXTURES THAT INCREASE ENERGY EFFICIENCY.

21 (vi) ENERGY RECOVERY SYSTEMS.

22 (vii) COGENERATION SYSTEMS THAT PRODUCE STEAM OR ANOTHER
23 FORM OF ENERGY FOR PRIVATE USE BY THE DISTRICT, PUBLIC SCHOOL
24 ACADEMY, OR CONSORTIUM IN A BUILDING OR COMPLEX OF BUILDINGS
25 OWNED BY THE DISTRICT, PUBLIC SCHOOL ACADEMY, OR A DISTRICT
26 WITHIN THE CONSORTIUM.

1 (C) "PERFORMANCE BASED CONTRACT" MEANS AN AGREEMENT UNDER
2 WHICH A PROVIDER, IN RETURN FOR PAYMENTS BY THE DISTRICT, PUBLIC
3 SCHOOL ACADEMY, OR CONSORTIUM, PROVIDES ENERGY CONSERVATION MEA-
4 SURES TO A DISTRICT, PUBLIC SCHOOL ACADEMY, OR CONSORTIUM OF DIS-
5 TRICTS AND IN SO DOING GUARANTEES SPECIFIC LEVELS OF COMFORT AND
6 GUARANTEES THAT THE TOTAL COSTS FOR PROJECT DESIGN, EQUIPMENT,
7 SERVICING, AND FINANCING WILL NOT EXCEED THE SAVINGS REALIZED
8 OVER THE TERM OF THE AGREEMENT.

9 (D) "PROVIDER" MEANS A PERSON WITH WHOM A BOARD OR CONSOR-
10 TIUM ENTERS INTO A PERFORMANCE BASED CONTRACT OR PACKAGE OF PER-
11 FORMANCE BASED CONTRACTS.

12 (E) "TRADE SECRET" MEANS A CONFIDENTIAL FORMULA, PATTERN,
13 DEVICE, OR COMPILATION OF INFORMATION THAT IS USED IN THE
14 PROVIDER'S OR PROPOSER'S BUSINESS AND THAT GIVES THE PROVIDER OR
15 PROPOSER AN OPPORTUNITY TO OBTAIN ADVANTAGE OVER COMPETITORS WHO
16 DO NOT KNOW OR USE IT.