

HOUSE BILL No. 6019

March 25, 2010, Introduced by Rep. Byrnes and referred to the Committee on Appropriations.

A bill to amend 1976 PA 451, entitled "The revised school code," by amending section 1274 (MCL 380.1274), as amended by 2008 PA 540; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1274. (1) The board of a school district **OR INTERMEDIATE**
2 **SCHOOL DISTRICT** or board of directors of a public school academy
3 shall adopt written policies governing the procurement of supplies,
4 materials, and ~~equipment.~~ **SERVICES, INSURANCE, UTILITIES, THIRD-**
5 **PARTY FINANCING, EQUIPMENT, AND ALL OTHER GOODS OR SERVICES NEEDED**
6 **BY THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC**
7 **SCHOOL ACADEMY. THE POLICIES SHALL BE CONSISTENT WITH THE**
8 **REQUIREMENTS OF THIS SECTION.**

1 (2) Except as otherwise provided in ~~subsection (4) or (5),~~
2 **THIS SECTION, a school district, INTERMEDIATE SCHOOL DISTRICT, or**
3 **public school academy shall not purchase an item or a group of**
4 **items in a single transaction costing \$20,959.00 or more unless**
5 **competitive bids are obtained for those items and the purchase of**
6 **those items is approved by the school board or board of directors.**
7 ~~The maximum amount specified in this subsection shall be adjusted~~
8 ~~each year by multiplying the amount for the immediately preceding~~
9 ~~year by the percentage by which the average consumer price index~~
10 ~~for all items for the 12 months ending August 31 of the year in~~
11 ~~which the adjustment is made differs from that index's average for~~
12 ~~the 12 months ending on August 31 of the immediately preceding year~~
13 ~~and adding that product to the maximum amount that applied in the~~
14 ~~immediately preceding year, rounding to the nearest whole dollar.~~
15 **USE COMPETITIVE SOLICITATION FOR ANY PROCUREMENT WITH A VALUE OF**
16 **\$50,000.00 OR MORE AND OBTAIN APPROVAL BY THE SCHOOL BOARD,**
17 **INTERMEDIATE SCHOOL BOARD, OR BOARD OF DIRECTORS BEFORE ENTERING**
18 **INTO A PROCUREMENT CONTRACT UNLESS 1 OR MORE OF THE FOLLOWING**
19 **APPLY:**

20 (A) **PROCUREMENT OF GOODS OR SERVICES IS NECESSARY FOR THE**
21 **IMMINENT PROTECTION OF PUBLIC HEALTH OR SAFETY OR TO MITIGATE AN**
22 **IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY, AS DETERMINED BY THE**
23 **SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL**
24 **ACADEMY.**

25 (B) **PROCUREMENT OF GOODS OR SERVICES IS FOR EMERGENCY REPAIR**
26 **OR CONSTRUCTION CAUSED BY UNFORESEEN CIRCUMSTANCES WHEN THE REPAIR**
27 **OR CONSTRUCTION IS NECESSARY TO PROTECT LIFE OR PROPERTY.**

1 (C) PROCUREMENT OF GOODS OR SERVICES IS IN RESPONSE TO A
2 DECLARED STATE OF EMERGENCY OR STATE OF DISASTER UNDER THE
3 EMERGENCY MANAGEMENT ACT, 1976 PA 390, MCL 30.401 TO 30.421.

4 (D) PROCUREMENT OF GOODS OR SERVICES IS IN RESPONSE TO A
5 DECLARED STATE OF EMERGENCY UNDER 1945 PA 302, MCL 10.31 TO 10.33.

6 (E) PROCUREMENT OF GOODS OR SERVICES IS IN RESPONSE TO A
7 DECLARED STATE OF ENERGY EMERGENCY UNDER 1982 PA 191, MCL 10.81 TO
8 10.89.

9 (3) A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC
10 SCHOOL ACADEMY SHALL SOLICIT COMPETITIVE BIDS FROM THE PRIVATE
11 SECTOR WHENEVER PRACTICABLE TO EFFICIENTLY AND EFFECTIVELY MEET THE
12 NEEDS OF THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR
13 PUBLIC SCHOOL ACADEMY. A SCHOOL DISTRICT, INTERMEDIATE SCHOOL
14 DISTRICT, OR PUBLIC SCHOOL ACADEMY SHALL FIRST DETERMINE THAT
15 COMPETITIVE SOLICITATION OF BIDS FROM THE PRIVATE SECTOR IS NOT
16 APPROPRIATE BEFORE IT USES ANY OTHER PROCUREMENT METHOD FOR AN
17 ACQUISITION. WHEN COMPETITIVE BIDS ARE NOT SOLICITED BY A SCHOOL
18 DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY,
19 THE PROCUREMENT SHALL PROCEED CONSISTENT WITH POLICIES OR
20 PROCEDURES APPROVED BY THE SCHOOL BOARD, INTERMEDIATE SCHOOL BOARD,
21 OR BOARD OF DIRECTORS TO ASSURE THAT GOODS OR SERVICES ARE
22 PURCHASED AT FAIR AND REASONABLE PRICES TO SECURE THE BEST VALUE
23 FOR THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC
24 SCHOOL ACADEMY.

25 (4) A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC
26 SCHOOL ACADEMY SHALL NOT AWARD A CONTRACT FOR THE CONSTRUCTION,
27 REPAIR, REMODELING, OR DEMOLITION OF A FACILITY UNLESS THE CONTRACT

1 IS LET PURSUANT TO A COMPETITIVE BIDDING PROCEDURE APPROVED BY THE
2 SCHOOL BOARD, INTERMEDIATE SCHOOL BOARD, OR BOARD OF DIRECTORS. ALL
3 OF THE FOLLOWING APPLY TO A CONTRACT DESCRIBED IN THIS SUBSECTION:

4 (A) THE BOARD, INTERMEDIATE SCHOOL BOARD, OR BOARD OF
5 DIRECTORS SHALL ADVERTISE FOR THE BIDS REQUIRED UNDER THIS
6 SUBSECTION BY PLACING AN ADVERTISEMENT FOR BIDS AT LEAST ONCE IN A
7 NEWSPAPER OF GENERAL CIRCULATION IN THE AREA WHERE THE BUILDING OR
8 ADDITION IS TO BE CONSTRUCTED OR WHERE THE REPAIR OR RENOVATION OF
9 AN EXISTING BUILDING IS TO TAKE PLACE AND BY POSTING AN
10 ADVERTISEMENT FOR BIDS FOR AT LEAST 2 WEEKS ON THE DEPARTMENT OF
11 MANAGEMENT AND BUDGET WEBSITE ON A PAGE ON THE WEBSITE MAINTAINED
12 FOR THIS PURPOSE OR ON A WEBSITE MAINTAINED BY A SCHOOL
13 ORGANIZATION AND DESIGNATED BY THE DEPARTMENT OF MANAGEMENT AND
14 BUDGET FOR THIS PURPOSE. IF THE DEPARTMENT OF MANAGEMENT AND BUDGET
15 DESIGNATES A SCHOOL ORGANIZATION WEBSITE FOR THIS PURPOSE, THE
16 DEPARTMENT OF MANAGEMENT AND BUDGET SHALL INDICATE THIS FACT ON ITS
17 WEBSITE AND INCLUDE A LINK ON ITS WEBSITE TO THE SCHOOL
18 ORGANIZATION WEBSITE.

19 (B) THE ADVERTISEMENT FOR BIDS SHALL DO ALL OF THE FOLLOWING:

20 (i) SPECIFY THE DATE AND TIME BY WHICH ALL BIDS MUST BE
21 RECEIVED BY THE BOARD, INTERMEDIATE SCHOOL BOARD, OR BOARD OF
22 DIRECTORS.

23 (ii) STATE THAT THE BOARD, INTERMEDIATE SCHOOL BOARD, OR BOARD
24 OF DIRECTORS WILL NOT CONSIDER OR ACCEPT A BID RECEIVED BY THE
25 BOARD, INTERMEDIATE SCHOOL BOARD, OR BOARD OF DIRECTORS AFTER THE
26 DATE AND TIME SPECIFIED FOR BID SUBMISSION.

27 (iii) IDENTIFY THE TIME, DATE, AND PLACE OF A PUBLIC MEETING AT

1 WHICH THE BOARD, INTERMEDIATE SCHOOL BOARD, OR BOARD OF DIRECTORS
2 OR ITS DESIGNEE WILL OPEN AND READ ALOUD EACH BID RECEIVED BY THE
3 BOARD, INTERMEDIATE SCHOOL BOARD, OR BOARD OF DIRECTORS BY THE DATE
4 AND TIME SPECIFIED IN SUBPARAGRAPH (i) .

5 (iv) STATE THAT THE BID SHALL BE ACCOMPANIED BY A SWORN AND
6 NOTARIZED STATEMENT DISCLOSING ANY FAMILIAL RELATIONSHIP THAT
7 EXISTS BETWEEN THE OWNER OR ANY EMPLOYEE OF THE BIDDER AND ANY
8 MEMBER OF THE BOARD, INTERMEDIATE SCHOOL BOARD, OR BOARD OF
9 DIRECTORS OR THE SUPERINTENDENT OF THE SCHOOL DISTRICT,
10 INTERMEDIATE SUPERINTENDENT OF THE INTERMEDIATE SCHOOL DISTRICT, OR
11 CHIEF EXECUTIVE OFFICER OF THE PUBLIC SCHOOL ACADEMY. A BOARD,
12 INTERMEDIATE SCHOOL BOARD, OR BOARD OF DIRECTORS SHALL NOT ACCEPT A
13 BID THAT DOES NOT INCLUDE THIS SWORN AND NOTARIZED DISCLOSURE
14 STATEMENT.

15 (C) THE BOARD, INTERMEDIATE SCHOOL BOARD, OR BOARD OF
16 DIRECTORS SHALL REQUIRE EACH BIDDER FOR A CONTRACT UNDER THIS
17 SUBSECTION TO FILE WITH THE BOARD, INTERMEDIATE SCHOOL BOARD, OR
18 BOARD OF DIRECTORS SECURITY IN AN AMOUNT NOT LESS THAN 1/20 OF THE
19 AMOUNT OF THE BID CONDITIONED TO SECURE THE SCHOOL DISTRICT FROM
20 LOSS OR DAMAGE BY REASON OF THE WITHDRAWAL OF THE BID OR BY THE
21 FAILURE OF THE BIDDER TO ENTER A CONTRACT FOR PERFORMANCE, IF THE
22 BID IS ACCEPTED BY THE BOARD, INTERMEDIATE SCHOOL BOARD, OR BOARD
23 OF DIRECTORS.

24 (D) THE BOARD, INTERMEDIATE SCHOOL BOARD, OR BOARD OF
25 DIRECTORS SHALL NOT OPEN, CONSIDER, OR ACCEPT A BID THAT THE BOARD,
26 INTERMEDIATE SCHOOL BOARD, OR BOARD OF DIRECTORS RECEIVES AFTER THE
27 DATE AND TIME SPECIFIED FOR BID SUBMISSION IN THE ADVERTISEMENT FOR

1 BIDS DESCRIBED IN SUBDIVISION (B).

2 (E) AT A PUBLIC MEETING IDENTIFIED IN THE ADVERTISEMENT FOR
3 BIDS DESCRIBED IN SUBDIVISION (B), THE BOARD, INTERMEDIATE SCHOOL
4 BOARD, OR BOARD OF DIRECTORS OR ITS DESIGNEE SHALL OPEN AND READ
5 ALOUD EACH BID THAT THE BOARD, INTERMEDIATE SCHOOL BOARD, OR BOARD
6 OF DIRECTORS RECEIVED AT OR BEFORE THE TIME AND DATE FOR BID
7 SUBMISSION SPECIFIED IN THE ADVERTISEMENT FOR BIDS. THE BOARD,
8 INTERMEDIATE SCHOOL BOARD, OR BOARD OF DIRECTORS MAY REJECT ANY OR
9 ALL BIDS, AND IF ALL BIDS ARE REJECTED, SHALL READVERTISE IN THE
10 MANNER REQUIRED BY THIS SECTION.

11 (F) THIS SUBSECTION DOES NOT APPLY TO BUILDINGS, RENOVATIONS,
12 OR REPAIRS COSTING LESS THAN \$50,000.00 OR TO REPAIR WORK NORMALLY
13 PERFORMED BY SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR
14 PUBLIC SCHOOL ACADEMY EMPLOYEES.

15 (G) A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC
16 SCHOOL ACADEMY SHALL NOT ENTER INTO A COST PLUS CONSTRUCTION
17 CONTRACT UNLESS ALL OF THE FOLLOWING APPLY:

18 (i) THE CONTRACT COST IS LESS THAN \$50,000.00.

19 (ii) THE CONTRACT IS FOR EMERGENCY REPAIR OR CONSTRUCTION
20 CAUSED BY UNFORESEEN CIRCUMSTANCES.

21 (iii) THE REPAIR OR CONSTRUCTION IS NECESSARY TO PROTECT LIFE OR
22 PROPERTY.

23 (iv) THE CONTRACT COMPLIES WITH ANY APPLICABLE CONTRACT
24 REQUIREMENTS OF THE DEPARTMENT OF CIVIL RIGHTS.

25 (5) THE SELECTION OF ARCHITECTS, PROFESSIONAL ENGINEERS,
26 PROFESSIONAL SURVEYORS, AND OTHER PROVIDERS OF PROFESSIONAL
27 SERVICES SHALL BE MADE BY A SCHOOL DISTRICT, INTERMEDIATE SCHOOL

1 DISTRICT, OR PUBLIC SCHOOL ACADEMY IN ACCORDANCE WITH COMPETITIVE,
2 QUALIFICATIONS-BASED SELECTION PROCESSES AND PROCEDURES FOR THE
3 TYPE OF PROFESSIONAL SERVICE REQUIRED BY THE SCHOOL DISTRICT,
4 INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY.

5 (6) ~~(3) The board of a school district or board of directors~~
6 ~~of a public school academy may adopt and implement a local policy~~
7 ~~that gives a preference to a Michigan based business in awarding a~~
8 ~~contract under this section. The policy may provide for a~~
9 ~~preference based on the status of the primary contractor as a~~
10 ~~Michigan based business or based on the status of 1 or more~~
11 ~~subcontractors of the primary contractor as Michigan based~~
12 ~~businesses, or both. A policy adopted under this subsection shall~~
13 ~~be consistent with federal statutes and regulations and shall not~~
14 ~~be applied to a contract that is to be paid with federal funds.~~
15 ~~Upon request by a school district or public school academy that has~~
16 ~~adopted and implemented a policy described in this subsection, the~~
17 **ALL OTHER THINGS BEING EQUAL, IN ALL PURCHASES MADE BY A SCHOOL**
18 **DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY,**
19 **PREFERENCE SHALL BE GIVEN TO PRODUCTS MANUFACTURED OR SERVICES**
20 **OFFERED BY A MICHIGAN-BASED BUSINESS, IF CONSISTENT WITH FEDERAL**
21 **LAW. THE** department of treasury shall disclose to ~~that~~ **A school**
22 **district, INTERMEDIATE SCHOOL DISTRICT, or public school academy**
23 **verifying information RELATING TO A MICHIGAN-BASED BUSINESS** as
24 described in section 268(3) of the management and budget act, 1984
25 PA 431, MCL 18.1268. ~~The adoption, implementation, or application~~
26 ~~of a policy described in this subsection, or a decision not to~~
27 ~~adopt, implement, or apply such a policy, does not create a cause~~

1 ~~of action.~~

2 (7) ~~(4)~~ A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR
 3 PUBLIC SCHOOL ACADEMY MAY ENTER INTO A COOPERATIVE PURCHASING
 4 AGREEMENT OR PARTICIPATE IN A COOPERATIVE PURCHASING PROGRAM WITH 1
 5 OR MORE OTHER SCHOOL DISTRICTS, INTERMEDIATE SCHOOL DISTRICTS,
 6 PUBLIC SCHOOL ACADEMIES, OTHER GOVERNMENTAL ENTITIES IN THIS STATE,
 7 OR THIS STATE, FOR THE PURCHASE OF GOODS, INCLUDING, BUT NOT
 8 LIMITED TO, RECYCLED GOODS, AND SERVICES NECESSARY FOR SCHOOL
 9 DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY
 10 PROGRAMS. A school district, INTERMEDIATE SCHOOL DISTRICT, or
 11 public school academy is not required to ~~obtain competitive bids~~
 12 ~~for items purchased~~ **UTILIZE COMPETITIVE SOLICITATION FOR GOODS OR**
 13 **SERVICES PROCURED** through the cooperative bulk purchasing program
 14 operated by the department of management and budget under section
 15 263(3) of the management and budget act, 1984 PA 431, MCL 18.1263,
 16 OR THROUGH ANOTHER COOPERATIVE PURCHASING PROGRAM OR A COOPERATIVE
 17 PROCUREMENT AGREEMENT IF ANOTHER ENTITY PARTICIPATING IN THE
 18 PROGRAM OR AGREEMENT PREVIOUSLY UTILIZED COMPETITIVE SOLICITATION
 19 FOR THE SAME GOODS OR SERVICES.

20 ~~—— (5) A school district or public school academy is not required~~
 21 ~~to obtain competitive bids for purchasing food unless the food is~~
 22 ~~purchased in a single transaction costing \$100,000.00 or more.~~

23 (8) ~~(6)~~ The board of **CONSISTENT WITH THE REQUIREMENTS OF THIS**
 24 **SECTION**, a school district, ~~or local act school district or board~~
 25 ~~of directors of a~~ **INTERMEDIATE SCHOOL DISTRICT, OR** public school
 26 academy may acquire by purchase, lease, or rental, with or without
 27 option to purchase, equipment necessary for the operation of the

1 school program, including, but not limited to, heating, water
2 heating, and cooking equipment for school buildings, and may pay
3 for the equipment from operating funds of the **SCHOOL** district,
4 **INTERMEDIATE SCHOOL DISTRICT**, or public school academy. Heating and
5 cooking equipment may be purchased on a title retaining contract or
6 other form of agreement creating a security interest and pledging
7 in payment money in the general fund or funds received from state
8 school aid. The contracts may extend for not more than 10 years.

9 (9) CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION, A SCHOOL
10 DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY
11 MAY ENTER INTO LEASE PURCHASES OR INSTALLMENT PURCHASES FOR PERIODS
12 NOT EXCEEDING THE ANTICIPATED USEFUL LIFE OF THE GOODS PURCHASED
13 UNLESS OTHERWISE PROHIBITED BY LAW.

14 (10) A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR
15 PUBLIC SCHOOL ACADEMY MAY LIMIT A SOLICITATION TO PREQUALIFIED
16 VENDORS TO MEET STATUTORY OR LICENSING REQUIREMENTS APPLICABLE TO
17 THE SOLICITATION OR WHEN THE TIME NECESSARY TO VERIFY VENDOR
18 QUALIFICATIONS WOULD JEOPARDIZE TIMELY AWARD OF CONTRACTS.

19 (11) A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR
20 PUBLIC SCHOOL ACADEMY MAY DEBAR A VENDOR FROM PARTICIPATION IN THE
21 PROCUREMENT PROCESS AND FROM CONTRACT AWARD UPON NOTICE AND A
22 FINDING THAT THE VENDOR IS NOT ABLE TO PERFORM RESPONSIBLY, OR THAT
23 THE VENDOR, OR AN OFFICER OR AN OWNER OF A 25% OR GREATER SHARE OF
24 THE VENDOR, HAS DEMONSTRATED A LACK OF INTEGRITY THAT COULD
25 JEOPARDIZE THE INTEREST OF THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL
26 DISTRICT, OR PUBLIC SCHOOL ACADEMY IF THE SCHOOL DISTRICT,
27 INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY WERE TO

1 **CONTRACT WITH THE VENDOR.**

2 (12) ~~(7)~~—As used in this section, "Michigan-based business"
3 means a business that would qualify for a preference in a
4 procurement contract with this state as determined under section
5 268 of the management and budget act, 1984 PA 431, MCL 18.1268.

6 Enacting section 1. Sections 623a and 1267 of the revised
7 school code, 1976 PA 451, MCL 380.623a and 380.1267, are repealed.