

HOUSE BILL No. 4080

January 24, 2017, Introduced by Reps. Griffin and Iden and referred to the Committee on Local Government.

A bill to amend 1976 PA 451, entitled
"The revised school code,"
by amending section 1274a (MCL 380.1274a), as amended by 2003 PA
255.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1274a. (1) The board of a school district, intermediate
2 school district, or local act school district may contract with a
3 qualified provider for **THE ACQUISITION OR FINANCING OF** energy
4 conservation **AND OPERATIONAL** improvements to school facilities **OR**
5 **INFRASTRUCTURE**. These improvements **OR THE FINANCING OR REFUNDING OF**
6 **THE IMPROVEMENTS** may be paid from operating funds of the school
7 district, ~~or~~ from the proceeds of bonds or notes issued for energy
8 conservation **AND OPERATIONAL** improvements, **OR FROM AN INSTALLMENT**
9 **CONTRACT OR LEASE-PURCHASE AGREEMENT**, or the board or intermediate

1 school board may enter into 1 or more energy saving performance
2 contracts. These contracts may contain a written financial
3 guarantee providing that the costs of improvements will be paid
4 only if the energy savings are sufficient to cover them. Energy
5 conservation **AND OPERATIONAL** improvements may include, but are not
6 limited to, building envelope improvements; heating, **VENTILATING**,
7 and cooling upgrades; lighting retrofits; installing or upgrading
8 an energy management system; motor, pump, or fan replacements;
9 domestic water use reductions; **INFORMATION TECHNOLOGY IMPROVEMENTS**
10 **ASSOCIATED WITH AN ENERGY CONSERVATION AND OPERATIONAL IMPROVEMENT;**
11 **MUNICIPAL UTILITY IMPROVEMENTS ASSOCIATED WITH AN ENERGY**
12 **CONSERVATION AND OPERATIONAL IMPROVEMENT;** and upgrading other
13 energy consuming equipment or appliances.

14 (2) A school board or intermediate school board that contracts
15 for energy conservation **AND OPERATIONAL** improvements under
16 subsection (1) may require the qualified provider to furnish a bond
17 that guarantees energy cost savings for a specified period of time.

18 (3) If a school board or intermediate school board enters into
19 an energy saving performance contract under this section, all of
20 the following apply:

21 (a) The bids for the contract shall provide a detailed
22 breakdown of the energy performance savings to be derived each year
23 and for the duration of the energy saving performance contract,
24 including at least all of the following:

25 (i) A description of the guaranteed energy use savings and
26 tasks to be performed under the energy saving performance contract.

27 (ii) The combined total net cost of all of the energy

conservation measures in the project.

(iii) The projected energy savings and operating and maintenance cost savings resulting from the project.

(iv) The useful life of each energy conservation measure.

(v) The simple payback period.

(b) The qualified provider shall certify that measurement and verification techniques for determining cost savings will be performed in accordance with the protocols ~~published in January~~

~~2001-PROMULGATED~~ by the ~~international performance measurement and~~

~~verification protocol inc.~~ **INTERNATIONAL PERFORMANCE MEASUREMENT AND**

VERIFICATION PROTOCOL, INC., NOW KNOWN AS EFFICIENCY VALUE

ORGANIZATION.

(4) The board of a school district, intermediate school district, or local act school district may provide for the removal or treatment of asbestos or other material injurious to health for school facilities and may pay for the improvements from operating funds of the school district or from the proceeds of bonds or notes issued for that purpose.

(5) Issuance of bonds for the purposes authorized by this section shall be considered as issued for capital expenditures for all purposes including section 16 of article IX of the state constitution of 1963. **A LEASE-PURCHASE AGREEMENT ISSUED PURSUANT TO THIS SUBSECTION SHALL NOT BE SUBJECT TO THE REVISED MUNICIPAL FINANCE ACT, 2001 PA 34, MCL 141.2101 TO 141.2821, AND SHALL NOT BE A MUNICIPAL SECURITY OR A DEBT AS THOSE TERMS ARE DEFINED IN THAT ACT.**

(6) Energy conservation **AND OPERATIONAL** improvements or

substance removal or treatment authorized by this section is subject to the competitive bidding requirements of section 1267.

(7) If energy conservation **AND OPERATIONAL** improvements are made by a school district, local act school district, or intermediate school district as provided in this section, the school board or intermediate school board shall **DETERMINE THE FOLLOWING INFORMATION AND SHALL** report the following information to the state treasurer within 60 days after the completion of the improvements:

(a) Name of each facility to which an improvement was made and a description of the **ENERGY** conservation **AND OPERATIONAL** improvements.

(b) Actual energy consumption during the 12-month period before ~~completion~~-**COMMENCEMENT** of the improvement.

(c) Project costs and expenditures, **INCLUDING THE TOTAL OF ALL LEASE PAYMENTS OVER THE DURATION OF THE LEASE-PURCHASE AGREEMENT.**

(d) Estimated annual energy savings, **INCLUDING PROJECTED SAVINGS OVER THE DURATION OF THE INSTALLMENT CONTRACT.**

(8) If energy conservation **AND OPERATIONAL** improvements are made as provided in this section, the school board or intermediate school board shall report to the state treasurer by July 1 of each of the 5 years after the improvements are completed the actual annual energy consumption of each facility to which improvements were made. The forms for the reports required by this section shall be furnished by the state treasurer.

(9) AN INSTALLMENT CONTRACT DESCRIBED IN THIS SECTION MAY INCLUDE A LEASE-PURCHASE AGREEMENT, WHICH MAY BE A MULTIYEAR

1 CONTRACTUAL OBLIGATION THAT PROVIDES FOR AUTOMATIC RENEWAL UNLESS
2 POSITIVE ACTION IS TAKEN BY THE BOARD OF A SCHOOL DISTRICT,
3 INTERMEDIATE SCHOOL DISTRICT, OR LOCAL ACT SCHOOL DISTRICT TO
4 TERMINATE THAT CONTRACT. PAYMENTS UNDER A LEASE-PURCHASE AGREEMENT
5 SHALL BE A CURRENT OPERATING EXPENSE SUBJECT TO ANNUAL
6 APPROPRIATIONS OF FUNDS BY THE BOARD OF A SCHOOL DISTRICT,
7 INTERMEDIATE SCHOOL DISTRICT, OR LOCAL ACT SCHOOL DISTRICT AND
8 SHALL OBLIGATE THE BOARD OF A SCHOOL DISTRICT, INTERMEDIATE SCHOOL
9 DISTRICT, OR LOCAL ACT SCHOOL DISTRICT ONLY FOR THOSE SUMS PAYABLE
10 DURING THE FISCAL YEAR OF CONTRACT EXECUTION OR ANY RENEWAL YEAR
11 THEREAFTER. THE BOARD OF A SCHOOL DISTRICT, INTERMEDIATE SCHOOL
12 DISTRICT, OR LOCAL ACT SCHOOL DISTRICT MAY MAKE PAYMENTS UNDER A
13 LEASE-PURCHASE AGREEMENT FROM ANY LEGALLY AVAILABLE FUNDS OR FROM A
14 COMBINATION OF ENERGY OR OPERATIONAL SAVINGS, CAPITAL
15 CONTRIBUTIONS, FUTURE REPLACEMENT COSTS AVOIDED, OR BILLABLE
16 REVENUE ENHANCEMENTS THAT RESULT FROM ENERGY CONSERVATION AND
17 OPERATIONAL IMPROVEMENTS, PROVIDED THAT THE BOARD OF A SCHOOL
18 DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR LOCAL ACT SCHOOL
19 DISTRICT HAS DETERMINED THAT THOSE FUNDS ARE SUFFICIENT TO COVER,
20 IN AGGREGATE OVER THE FULL TERM OF THE CONTRACTUAL AGREEMENT, THE
21 COST OF THE ENERGY CONSERVATION AND OPERATIONAL IMPROVEMENTS. THE
22 LEASE-PURCHASE AGREEMENT WILL TERMINATE IMMEDIATELY AND ABSOLUTELY
23 AND WITHOUT FURTHER OBLIGATION ON THE PART OF THE BOARD OF A SCHOOL
24 DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR LOCAL ACT SCHOOL
25 DISTRICT AT THE CLOSE OF THE FISCAL YEAR IN WHICH IT WAS EXECUTED
26 OR RENEWED OR AT SUCH TIME AS APPROPRIATED AND OTHERWISE
27 UNOBLIGATED FUNDS ARE NO LONGER AVAILABLE TO SATISFY THE

OBLIGATIONS OF THE BOARD OF A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR LOCAL ACT SCHOOL DISTRICT UNDER THE LEASE-PURCHASE AGREEMENT. DURING THE TERM OF THE LEASE-PURCHASE AGREEMENT, THE BOARD OF A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR LOCAL ACT SCHOOL DISTRICT SHALL BE THE VESTED OWNER OF THE ENERGY CONSERVATION AND OPERATIONAL IMPROVEMENTS AND MAY GRANT A SECURITY INTEREST IN THE ENERGY CONSERVATION AND OPERATIONAL IMPROVEMENTS TO THE PROVIDER OF THE LEASE-PURCHASE AGREEMENT. UPON THE TERMINATION OF THE LEASE-PURCHASE AGREEMENT AND THE SATISFACTION OF THE OBLIGATIONS OF THE BOARD OF A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR LOCAL ACT SCHOOL DISTRICT, THE PROVIDER OF THE LEASE-PURCHASE AGREEMENT SHALL RELEASE ITS SECURITY INTEREST IN THE ENERGY CONSERVATION AND OPERATIONAL IMPROVEMENTS.

(10) ~~(9)~~—As used in this section:

(a) "Energy saving performance contract" means an agreement for the evaluation, recommendation, and implementation of energy conservation measures including, but not limited to, an energy audit or detailed energy study; the design, installation, operation, and maintenance of 1 or more energy conservation measures; energy management services; and an energy savings guarantee.

(b) "Qualified provider" means an individual or a business entity that is experienced in performing design, analysis, and installation of energy conservation **AND OPERATIONAL** improvements and facility energy management measures and that will provide these services under the contract with a guarantee or on a performance basis.