



SENATE BILL No. 372

March 7, 1995, Introduced by Senators BOUCHARD and DUNASKISS and referred to the Committee on Technology and Energy.

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," section 623a as amended by Act No. 159 of the Public Acts of 1990, sections 1267 and 1274 as amended by Act No. 416 of the Public Acts of 1994, 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, section 623a as amended by
3 Act No. 159 of the Public Acts of 1990, sections 1267 and 1274 as
4 amended by Act No. 416 of the Public Acts of 1994, and
5 section 1274a as amended by Act No. 227 of the Public Acts of

1 1990, being sections 380.623a, 380.1267, 380.1274, and 380.1274a
2 of the Michigan Compiled Laws, are amended and section 1274b is
3 added to read as follows:

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

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

1 directors of a public school academy, except for the board of a
2 first class school district, shall obtain competitive bids on all
3 the material and labor required for the complete construction of
4 a proposed new building or addition to or repair or renovation of
5 an existing school building.

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

11 The advertisement for bids shall do all of the following:

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

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

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

21 (3) The board or board of directors shall require each
22 bidder for a contract under this section to file with the board
23 or board of directors security in an amount not less than 1/20 of
24 the amount of the bid conditioned to secure the school district
25 from loss or damage by reason of the withdrawal of the bid or by
26 the failure of the bidder to enter a contract for performance, if
27 the bid is accepted by the board or board of directors.

1 (4) The board or board of directors shall not open,
2 consider, or accept a bid that the board or board of directors
3 receives after the date and time specified for bid submission in
4 the advertisement for bids described in subsection (2).

5 (5) At a public meeting identified in the advertisement for
6 bids described in subsection (2), the board or board of directors
7 or its designee shall open and read aloud each bid that the board
8 or board of directors received at or before the time and date for
9 bid submission specified in the advertisement for bids. The
10 board or board of directors may reject any or all bids ~~and~~ and if
11 all bids are rejected, shall readvertise in the manner required
12 by this section.

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

25 Sec. 1274. (1) The board of a school district or board of
26 directors of a public school academy shall adopt written policies
27 governing the procurement of supplies, materials, and equipment.

1 ~~A~~ EXCEPT FOR A PERFORMANCE BASED CONTRACT AUTHORIZED UNDER
2 SECTION 1274B OR PACKAGE OF PERFORMANCE BASED CONTRACTS AUTHO--
3 RIZED UNDER SECTION 1274B, A school district or public school
4 academy shall not purchase an item or a group of items in a
5 single transaction costing \$12,500.00 or more unless competitive
6 bids are obtained for those items and the purchase of those items
7 is approved by the school board or board of directors. The maxi-
8 mum amount specified in this subsection shall be adjusted each
9 year by multiplying the MAXIMUM amount ~~for~~ THAT APPLIED IN the
10 immediately preceding year by the percentage by which the average
11 consumer price index for all items for the 12 months ending
12 August 31 of the year in which the adjustment is made differs
13 from that CONSUMER PRICE index's average for the 12 months ending
14 on August 31 of the immediately preceding year and adding that
15 product to the maximum amount that applied in the immediately
16 preceding year, rounding to the nearest whole dollar.

17 (2) The board of a school district or local act school dis-
18 trict or board of directors of a public school academy may
19 acquire by purchase, lease, or rental, with or without option to
20 purchase, equipment necessary for the operation of the school
21 program, including, but not limited to, heating, water heating,
22 and cooking equipment for school buildings, and may pay for the
23 equipment from operating funds of the district or public school
24 academy. Heating and cooking equipment may be purchased on a
25 title retaining contract or other form of agreement creating a
26 security interest and pledging in payment money in the general

1 fund or funds received from state school aid. The contracts may
2 extend for not more than 10 years.

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

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

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

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

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

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

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

18 (c) Project costs and expenditures.

19 (d) Estimated annual energy savings.

20 (6) If energy conservation improvements are made as provided
21 in this section, the school board of the school district or ~~an~~
22 intermediate school district shall report to the Michigan public
23 service commission by July 1 of each of the 5 years after the
24 improvements are completed the actual annual energy consumption
25 of each facility to which improvements were made. The forms for
26 the reports required by this section shall be furnished by the
27 Michigan public service commission.

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

18 (A) THE BOARD OR CONSORTIUM OBTAINS FROM THE MICHIGAN PUBLIC
19 SERVICE COMMISSION NOT EARLIER THAN 1 YEAR BEFORE ENTERING INTO
20 THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED
21 CONTRACTS THE LIST OF POTENTIAL ENERGY SERVICES PROVIDERS DEVEL-
22 OPED UNDER SUBSECTION (10).

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

26 (C) THE PROVIDER FILES WITH THE BOARD OR CONSORTIUM A
27 PERFORMANCE BOND, INSURANCE POLICY, OR OTHER GUARANTY INSTRUMENT

1 ACCEPTED BY THE DISTRICT AND ISSUED BY A THIRD PARTY INSURER THAT
2 GUARANTEES THE FAITHFUL EXECUTION OF THE PERFORMANCE BASED CON-
3 TRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS IN AN AMOUNT THAT
4 IS AT LEAST EQUAL TO 110% OF THE COMBINED TOTAL OF THE SAVINGS
5 GUARANTEE AMOUNTS DESCRIBED IN SUBDIVISIONS (D) AND (E) AND THAT
6 THE BOARD OR CONSORTIUM DETERMINES TO BE REASONABLE AND NECESSARY
7 TO PROTECT THE INTERESTS OF THE DISTRICT OR THE DISTRICTS IN THE
8 CONSORTIUM. THE PERFORMANCE BOND, INSURANCE POLICY, OR OTHER
9 GUARANTY INSTRUMENT SHALL BE EFFECTIVE FOR AT LEAST THE TERM OF
10 THE SAVINGS GUARANTEE AMOUNTS DESCRIBED IN SUBDIVISIONS (D) AND
11 (E). THE BOARD OR CONSORTIUM MAY ALSO REQUIRE A SEPARATE PER-
12 FORMANCE BOND, INSURANCE POLICY, OR OTHER GUARANTY INSTRUMENT FOR
13 THE INSTALLATION OF THE ENERGY CONSERVATION MEASURES.

14 (D) THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE
15 BASED CONTRACTS CONTAINS A WRITTEN GUARANTEE OF A SPECIFIC MINI-
16 MUM AMOUNT OF MONEY THAT THE DISTRICT OR THE DISTRICTS IN THE
17 CONSORTIUM WILL SAVE IN ENERGY COSTS AS A RESULT OF THE PER-
18 FORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CON-
19 TRACTS, INCLUDING, BUT NOT LIMITED TO, ELECTRICAL, GAS, AND OTHER
20 UTILITY COSTS, AND A WRITTEN GUARANTEE BY THE PROVIDER TO PERFORM
21 THE NECESSARY SERVICE TO ENSURE THAT AT LEAST THAT AMOUNT OF SAV-
22 INGS IS REALIZED.

23 (E) THE PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE
24 BASED CONTRACTS CONTAINS A WRITTEN GUARANTEE OF A SPECIFIC MINI-
25 MUM AMOUNT OF MONEY THAT THE DISTRICT OR THE DISTRICTS IN THE
26 CONSORTIUM WILL SAVE IN OPERATING COSTS AS A RESULT OF THE
27 PERFORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED

1 CONTRACTS AND A WRITTEN GUARANTEE BY THE PROVIDER TO PERFORM THE
2 NECESSARY SERVICE TO ENSURE THAT AT LEAST THAT AMOUNT OF SAVINGS
3 IS REALIZED.

4 (F) THE PROVIDER AGREES TO MONITOR THE RESULTS OF THE ENERGY
5 CONSERVATION MEASURES.

6 (G) THE BOARD OR CONSORTIUM FINDS THAT THE AMOUNT THE DIS-
7 TRICT OR THE DISTRICTS IN THE CONSORTIUM WILL SPEND ON ENERGY
8 CONSERVATION MEASURES UNDER THE PERFORMANCE BASED CONTRACT OR
9 PACKAGE OF PERFORMANCE BASED CONTRACTS WILL NOT EXCEED 95% OF THE
10 COMBINED TOTAL OVER THE CONTRACT PERIOD OF THE SAVINGS GUARANTEE
11 AMOUNTS DESCRIBED IN SUBDIVISIONS (D) AND (E).

12 (H) THE BOARD OR CONSORTIUM FINDS THAT THE DISTRICT'S OR
13 CONSORTIUM'S CONTRACTUAL OBLIGATION IN ANY YEAR OF THE PER-
14 FORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS
15 WILL NOT EXCEED THE ANNUAL SAVINGS GUARANTEE AMOUNTS DESCRIBED IN
16 SUBDIVISIONS (D) AND (E), AS SPECIFIED IN THE PERFORMANCE BASED
17 CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS.

18 (2) IN MAKING FINDINGS UNDER SUBSECTION (1), A BOARD OR CON-
19 SORTIUM SHALL CONSIDER ALL COSTS OF THE ENERGY CONSERVATION MEA-
20 SURES, INCLUDING, BUT NOT LIMITED TO, COSTS OF DESIGN, ENGINEER-
21 ING, INSTALLATION, MAINTENANCE, REPAIRS, OPERATIONS, AND DEBT
22 SERVICE FOR THE ENERGY CONSERVATION MEASURES.

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

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

17 (5) 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 (6), 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 (6) IF A PROPOSAL NOTICE UNDER SUBSECTION (5) 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 (7) IF PROVIDED IN A PROPOSAL NOTICE UNDER SUBSECTION (5),
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.

26 (8) A BOARD OR CONSORTIUM MAY PAY FOR A PERFORMANCE BASED
27 CONTRACT OR PACKAGE OF CONTRACTS UNDER THIS SECTION FROM

1 OPERATING FUNDS OF THE DISTRICT OR THE DISTRICTS IN THE
2 CONSORTIUM OR FROM THE PROCEEDS OF BONDS OR NOTES ISSUED FOR
3 ENERGY CONSERVATION MEASURES. ISSUANCE OF BONDS FOR THE PURPOSES
4 AUTHORIZED BY THIS SECTION SHALL BE CONSIDERED AS ISSUED FOR CAP-
5 ITAL EXPENDITURES FOR ALL PURPOSES INCLUDING SECTION 16 OF ARTI-
6 CLE IX OF THE STATE CONSTITUTION OF 1963.

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

13 (10) THE MICHIGAN PUBLIC SERVICE COMMISSION SHALL DEVELOP
14 AND MAINTAIN A LIST OF POTENTIAL ENERGY SERVICES PROVIDERS TO BE
15 MADE AVAILABLE TO DISTRICTS AND CONSORTIA THAT ENTER INTO A PER-
16 FORMANCE BASED CONTRACT OR PACKAGE OF PERFORMANCE BASED CONTRACTS
17 UNDER THIS SECTION WITHOUT SEEKING COMPETITIVE PROPOSALS UNDER
18 SUBSECTION (5). THE MICHIGAN PUBLIC SERVICE COMMISSION IS NOT
19 LIABLE FOR INACCURACIES IN THE LIST OF POTENTIAL ENERGY SERVICES
20 PROVIDERS. THE LIST OF POTENTIAL ENERGY SERVICES PROVIDERS IS
21 INTENDED AND SHALL BE USED ONLY FOR INFORMATIONAL PURPOSES AND
22 SHALL CONTAIN A DISCLAIMER STATING THAT THE LIST DOES NOT INDI-
23 CATE A POTENTIAL PROVIDER'S COMPETENCE TO PERFORM ENERGY CONSER-
24 VATION MEASURES. UPON REQUEST, THE MICHIGAN PUBLIC SERVICE COM-
25 MISSION IMMEDIATELY SHALL MAKE AVAILABLE TO ANYONE THE NAMES AND
26 ADDRESSES OF DISTRICTS, CONSORTIA, AND OTHER PERSONS REQUESTING A
27 COPY OF THE LIST OF POTENTIAL ENERGY SERVICES PROVIDERS IN THE

1 12 MONTHS IMMEDIATELY PRECEDING THE REQUEST. IN DEVELOPING AND
2 MAINTAINING THE LIST OF POTENTIAL ENERGY SERVICES PROVIDERS, THE
3 MICHIGAN PUBLIC SERVICE COMMISSION SHALL DO ALL OF THE
4 FOLLOWING:

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

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

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

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

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

22 (11) AS USED IN THIS SECTION:

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

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

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

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

10 (iv) HEATING, VENTILATING, OR AIR-CONDITIONING SYSTEMS, MOD-
11 IFICATIONS, OR REPLACEMENTS.

12 (v) LIGHTING FIXTURES THAT INCREASE ENERGY EFFICIENCY.

13 (vi) ENERGY RECOVERY SYSTEMS.

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

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

25 (C) "PROVIDER" MEANS A PERSON WITH WHOM A BOARD OR CONSOR-
26 TIUM ENTERS INTO A PERFORMANCE BASED CONTRACT OR PACKAGE OF
27 PERFORMANCE BASED CONTRACTS.

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