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SYNOPSIS:

Under existing law, the minimum amount for contracts subject to competitive bid for city and county boards of education is \$15,000.

This bill would increase the minimum threshold amount and would authorize that threshold to be increased in the future based on increases in the Consumer Price Index.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the

25 purpose.

26 The purpose or effect of this bill would be to require
27 a new or increased expenditure of local funds within
28 the meaning of the amendment. However, the bill does
29 not require approval of a local governmental entity or
30 enactment by a 2/3 vote to become effective because it
31 comes within one of the specified exceptions contained
32 in the amendment.

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36 A BILL

37 TO BE ENTITLED

38 AN ACT

39

40 To amend Sections 16-13B-1, 16-13B-4, and 16-13B-5,
41 Code of Alabama 1975, relating to competitive bidding
42 on contracts of city and county boards of education;
43 to increase the minimum amount for contracts subject
44 to competitive bid from \$15,000 to \$40,000; to provide
45 a legislative process for increasing the threshold
46 dollar amount in the future based on increases in the
47 Consumer Price Index; and in connection therewith
48 would have as its purpose or effect the requirement of

49 a new or increased expenditure of local funds within
50 the meaning of Section 111.05 of the Constitution of
51 Alabama of 2022.

52 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

53 Section 1. Sections 16-13B-1, 16-13B-4, and 16-13B-5
54 of the Code of Alabama 1975, are amended to read as
55 follows:

56 "§16-13B-1

57 (a) (1) This chapter shall apply to county boards of
58 education and city boards of education, or any
59 combination of city and county boards of education as
60 herein provided for the competitive bidding of certain
61 contracts. With the exception of contracts for public
62 works whose competitive bidding requirements are
63 governed exclusively by Title 39, all expenditure of
64 funds of whatever nature for labor, services, work, or
65 for the purchase of materials, equipment, supplies, or
66 other personal property involving fifteen thousand
67 dollars (\$15,000) forty thousand dollars (\$40,000) or
68 more, and the lease of materials, equipment, supplies,
69 or other personal property where the lessee is, or
70 becomes legally and contractually, bound under the
71 terms of the lease, to pay a total amount of fifteen
72 thousand dollars (\$15,000) forty thousand dollars

73 (\$40,000) or more, made by or on behalf of any city or
74 county board of education, except as hereinafter
75 provided, shall be made under contractual agreement
76 entered into by free and open competitive bidding, on
77 sealed bids, to the lowest responsible bidder.

78 (2) Beginning October 1, 2027, and every three years
79 thereafter, all minimum dollar amounts used in this
80 chapter shall be subject to a cost adjustment based on
81 the following procedure: The Chief Examiner of the
82 Department of Examiners of Public Accounts may submit
83 to the Chair of the Legislative Council a
84 recommendation that the amount be increased based on
85 the percentage increase in the Consumer Price Index
86 for the immediately preceding three-year period,
87 rounded down to the nearest thousand dollars. The
88 recommendation shall be subject to the approval of the
89 Legislative Council. In the event the recommendation
90 is not disapproved by the Legislative Council by the
91 end of April following the submission of the
92 recommendation, the recommendation shall be deemed to
93 be approved. Upon approval, the Chief Examiner shall
94 notify the public of the adjusted dollar amounts by
95 July 1 before the fiscal year in which the changes are
96 to take effect. The increase may not exceed three

97 percent.

98 (b) Prior to advertising for bids for an item of
99 personal property, where a city or county board of
100 education, thereof is the awarding authority, the
101 awarding authority may establish a local preference
102 zone consisting of either the legal boundaries or
103 jurisdiction of the awarding authority, or the
104 boundaries of the county in which the awarding
105 authority is located, or the boundaries of the core
106 based statistical area (CBSA) in which the awarding
107 authority is located. If no such action is taken by
108 the awarding authority, the boundaries of the local
109 preference zone shall be deemed to be the same as the
110 legal boundaries or jurisdiction of the awarding
111 authority. In the event a bid is received for an item
112 of personal property to be purchased or contracted for
113 from a person, firm, or corporation deemed to be a
114 responsible bidder, having a place of business within
115 the local preference zone where a city or county board
116 of education, thereof is the awarding authority, and
117 the bid is no more than three percent greater than the
118 bid of the lowest responsible bidder, the awarding
119 authority may award the contract to the resident
120 responsible bidder. In the event only one bidder

121 responds to the invitation to bid, the awarding
122 authority may reject the bid and negotiate the
123 purchase or contract, providing the negotiated price
124 is lower than the bid price.

125 (c) The governing bodies of two or more city or county
126 boards of education, or any combination of two or more
127 city or county boards of education, counties,
128 municipalities, or instrumentalities thereof, may
129 provide, by joint agreement, for the purchase of
130 labor, services, or work, or for the purchase or lease
131 of materials, equipment, supplies, or other personal
132 property for use by their respective agencies. The
133 agreement shall be entered into by official actions of
134 the contracting agencies adopted by each of the
135 participating governing bodies which shall set forth
136 the categories of labor, services, or work, or for the
137 purchase or lease of materials, equipment, supplies,
138 or other personal property to be purchased, the manner
139 of advertising for bids and the awarding of contracts,
140 the method of payment by each participating
141 contracting agency, and other matters deemed necessary
142 to carry out the purposes of the agreement. Each
143 contracting agency's share of expenditures for
144 purchases under any agreement shall be appropriated

145 and paid in the manner set forth in the agreement and
146 in the same manner as for other expenses of the
147 contracting agency. The contracting agencies entering
148 into a joint agreement, as herein permitted, may
149 designate a joint purchasing or bidding agent, and the
150 agent shall comply with this chapter. Purchases,
151 contracts, or agreements made pursuant to a joint
152 purchasing or bidding agreement shall be subject to
153 all terms and conditions of this chapter. Any
154 participation by counties and municipalities
155 authorized in this section shall be subject to the
156 provisions of subsection (b) of Section 41-16-50. In
157 the event that utility services are no longer exempt
158 from competitive bidding under this chapter,
159 non-adjointing boards of education may not purchase
160 utility services by joint agreement under authority
161 granted by this subsection.

162 (d) The awarding authority may require bidders to
163 furnish a bid bond for a particular bid solicitation
164 if the bonding requirement applies to all bidders, is
165 included in the written bid specifications, and if
166 bonding is available for the services, equipment, or
167 materials."

168 "§16-13B-4

169 (a) All proposed purchases in excess of fifteen
170 thousand dollars (\$15,000) forty thousand dollars
171 (\$40,000) shall be advertised by posting notice
172 thereof on a bulletin board maintained outside the
173 purchasing office and in any other manner and for any
174 length of time as may be determined. Sealed bids or
175 bids to be submitted by a reverse auction procedure
176 shall also be solicited by sending notice by mail or
177 other electronic means to all persons, firms, or
178 corporations who have filed a request in writing that
179 they be listed for solicitation on bids for the
180 particular items that are set forth in the request. If
181 any person, firm, or corporation whose name is listed
182 fails to respond to any solicitation for bids after
183 the receipt of three solicitations, the listing may be
184 cancelled.

185 (b) Except as provided in subsection (c), all bids
186 shall be sealed when received and shall be opened in
187 public at the hour stated in the notice.

188 (c) The awarding authority may make purchases or
189 contracts through a reverse auction procedure;
190 provided, however, that a reverse auction shall only
191 be allowed where the item to be purchased at a reverse
192 auction is either not at the time available on the

193 state purchasing program under the same terms and
194 conditions or, if available, the lowest price offered
195 in the reverse auction is equal to or less than the
196 price for which the item is available on the state
197 purchasing program under the same terms and
198 conditions. All of the purchases shall be subject to
199 audit by the Department of Examiners of Public
200 Accounts. For purposes of this chapter, a reverse
201 auction procedure includes either of the following:
202 (1) A real-time bidding process usually lasting less
203 than one hour and taking place at a previously
204 scheduled time and Internet location, in which
205 multiple anonymous suppliers submit bids to provide
206 the designated goods or services.
207 (2) a. A bidding process usually lasting less than two
208 weeks and taking place during a previously scheduled
209 period and at a previously scheduled Internet
210 location, in which multiple anonymous suppliers submit
211 bids to provide the designated goods or services.
212 b. The Department of Examiners of Public Accounts
213 shall establish procedures for the use of reverse
214 auction, which shall be distributed to all contracting
215 agencies and shall be used in conducting any audits of
216 the purchasing agency.

217 (d) All original bids together with all documents
218 pertaining to the award of the contract shall be
219 retained in accordance with a retention period of at
220 least seven years established by the Local Government
221 Records Commission and shall be open to public
222 inspection.

223 (e) No purchase or contract involving professional
224 services shall be subject to the requirements of this
225 chapter and no purchase or contract involving an
226 amount in excess of fifteen thousand dollars (\$15,000)
227 forty thousand dollars (\$40,000) shall be divided into
228 parts involving amounts of fifteen thousand dollars
229 (\$15,000) forty thousand dollars (\$40,000) or less for
230 the purpose of avoiding the requirements of this
231 chapter. All such partial contracts involving fifteen
232 thousand dollars (\$15,000) forty thousand dollars
233 (\$40,000) or less shall be void."

234 "§16-13B-5

235 (a) Any agreement or collusion among bidders or
236 prospective bidders in restraint of freedom of
237 competition, by agreement, to bid at a fixed price or
238 to refrain from bidding or otherwise shall render the
239 bids of such bidders void and shall cause such bidders
240 to be disqualified from submitting further bids to the

241 awarding authority on future purchases.

242 (b) Whoever knowingly participates in a collusive
243 agreement in violation of this section involving a bid
244 or bids of fifteen thousand dollars (\$15,000) forty
245 thousand dollars (\$40,000) and under shall be guilty
246 of a Class A misdemeanor and, upon conviction, shall
247 be punished as prescribed by law.

248 (c) Whoever knowingly and intentionally participates
249 in a collusive agreement in violation of this section
250 involving a bid or bids of over fifteen thousand
251 dollars (\$15,000) forty thousand dollars (\$40,000)
252 shall be guilty of a Class C felony, and upon
253 conviction shall be punished as prescribed by law."

254 Section 2. Although this bill would have as its
255 purpose or effect the requirement of a new or
256 increased expenditure of local funds, the bill is
257 excluded from further requirements and application
258 under Section 111.05 of the Constitution of Alabama of
259 2022, because the bill defines a new crime or amends
260 the definition of an existing crime.

261 Section 3. This act shall become effective on the
262 first day of the third month following its passage and
263 approval by the Governor, or its otherwise becoming
264 law.