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8           SYNOPSIS:

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

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

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

purpose.

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

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A BILL

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To amend Sections 16-13B-1, 16-13B-4, and 16-13B-5, Code of Alabama 1975, relating to competitive bidding on contracts of city and county boards of education; to increase the minimum amount for contracts subject to competitive bid from \$15,000 to \$40,000; to provide a legislative process for increasing the threshold dollar amount in the future based on increases in the Consumer Price Index; and in connection therewith 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-adjoining 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

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

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

(c) The awarding authority may make purchases or contracts through a reverse auction procedure; provided, however, that a reverse auction shall only be allowed where the item to be purchased at a reverse 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.