



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1680

Introduced 2/22/2007, by Rep. Karen A. Yarbrough

SYNOPSIS AS INTRODUCED:

See Index

Amends the School Code. Makes changes with respect to requiring a regional superintendent of schools to employ a regional inspector general for school districts; a school board member having a fiduciary relationship with the district; allowing a school board member to be removed for negligent (rather than wilful) failure to perform his or her official duties, any violation of the School Code, or a breach of fiduciary duty; prohibiting a school board member from holding any other public office; requiring a district to establish a database listing all vendors who have contracts with the district; a school board employing a general counsel; prohibiting a school board member, employee of a school district, or general counsel from being interested in any contract, work, or business of any school district, in the sale of any article, or in the purchase of any property that belongs to any school district, is sold for taxes or assessments, or is sold by virtue of legal process at the suit of any district; and exceptions to the requirement that contracts involving an expenditure in excess of \$10,000 be awarded to the lowest responsible bidder. Amends the State Mandates Act to require implementation without reimbursement.

LRB095 06658 NHT 31885 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The School Code is amended by adding Sections
5 3-14.11a, 10-9.5, 10-21.4b, 34-4.2, and 34-4.3 and by changing
6 Sections 3-15.5, 10-9, 10-11, 10-20.21, 10-21.4, 33-5, and
7 34-21.3 as follows:

8 (105 ILCS 5/3-14.11a new)

9 Sec. 3-14.11a. Regional inspector general. To employ a
10 regional inspector general within the regional office of
11 education. The regional inspector general shall have all of the
12 following duties:

13 (1) To conduct audits on the use of school district
14 funds.

15 (2) To educate school board members on their roles,
16 duties, and responsibilities.

17 (3) To confirm the need for referendums that call for
18 increased funding for or tax increases within a school
19 district.

20 (4) To investigate any complaints of misconduct
21 committed by members of a school board or employees of a
22 school district.

23 In addition, the approval of the regional inspector general

1 is required in order for a school board member to expend any
2 school district funds on himself or herself.

3 (105 ILCS 5/3-15.5) (from Ch. 122, par. 3-15.5)

4 Sec. 3-15.5. Removal of school board members. To remove any
5 member of a school board from office for negligent ~~wilful~~
6 failure to perform his or her official duties, any violation of
7 this Code, or a breach of fiduciary duty.

8 (Source: Laws 1961, p. 31.)

9 (105 ILCS 5/10-9) (from Ch. 122, par. 10-9)

10 Sec. 10-9. Interest of board member, district employee, and
11 general counsel in contracts.

12 (a) No school board member, employee of the school
13 district, or general counsel shall be interested, directly or
14 indirectly, in his own name or in the name of any other person,
15 association, trust or corporation, in any contract, work or
16 business of any school ~~the~~ district or in the sale of any
17 article, whenever the expense, price or consideration of the
18 contract, work, business or sale is paid either from the
19 treasury or by any assessment levied by any statute or
20 ordinance. No school board member, employee of the school
21 district, or general counsel shall be interested, directly or
22 indirectly, in the purchase of any property which (1) belongs
23 to any school ~~the~~ district, or (2) is sold for taxes or
24 assessments, or (3) is sold by virtue of legal process at the

1 suit of any ~~the~~ district.

2 (b) (Blank). ~~However, any board member may provide~~
3 ~~materials, merchandise, property, services or labor, if:~~

4 ~~A. the contract is with a person, firm, partnership,~~
5 ~~association, corporation or cooperative association in~~
6 ~~which the board member has less than a 7 1/2% share in the~~
7 ~~ownership; and~~

8 ~~B. such interested board member publicly discloses the~~
9 ~~nature and extent of his interest prior to or during~~
10 ~~deliberations concerning the proposed award of the~~
11 ~~contract; and~~

12 ~~C. such interested board member abstains from voting on~~
13 ~~the award of the contract, though he shall be considered~~
14 ~~present for the purposes of establishing a quorum; and~~

15 ~~D. such contract is approved by a majority vote of~~
16 ~~those board members presently holding office; and~~

17 ~~E. the contract is awarded after sealed bids to the~~
18 ~~lowest responsible bidder if the amount of the contract~~
19 ~~exceeds \$1500, or awarded without bidding if the amount of~~
20 ~~the contract is less than \$1500; and~~

21 ~~F. the award of the contract would not cause the~~
22 ~~aggregate amount of all such contracts so awarded to the~~
23 ~~same person, firm, association, partnership, corporation~~
24 ~~or cooperative association in the same fiscal year to~~
25 ~~exceed \$25,000.~~

26 (c) (Blank). ~~In addition to the above exemption, any board~~

1 ~~member may provide materials, merchandise, property, services~~
2 ~~or labor if:~~

3 ~~A. the award of the contract is approved by a majority~~
4 ~~vote of the board provided that any such interested member~~
5 ~~shall abstain from voting; and~~

6 ~~B. the amount of the contract does not exceed \$1,000;~~
7 ~~and~~

8 ~~C. the award of the contract would not cause the~~
9 ~~aggregate amount of all such contracts so awarded to the~~
10 ~~same person, firm, association, partnership, corporation,~~
11 ~~or cooperative association in the same fiscal year to~~
12 ~~exceed \$2,000, except with respect to a board member of a~~
13 ~~school district in which the materials, merchandise,~~
14 ~~property, services, or labor to be provided under the~~
15 ~~contract are not available from any other person, firm,~~
16 ~~association, partnership, corporation, or cooperative~~
17 ~~association in the district, in which event the award of~~
18 ~~the contract shall not cause the aggregate amount of all~~
19 ~~contracts so awarded to that same person, firm,~~
20 ~~association, partnership, or cooperative association in~~
21 ~~the same fiscal year to exceed \$5,000; and~~

22 ~~D. such interested member publicly discloses the~~
23 ~~nature and extent of his interest prior to or during~~
24 ~~deliberations concerning the proposed award of the~~
25 ~~contract; and~~

26 ~~E. such interested member abstains from voting on the~~

1 ~~award of the contract, though he shall be considered~~
2 ~~present for the purposes of establishing a quorum.~~

3 (d) (Blank). ~~In addition to exemptions otherwise~~
4 ~~authorized by this Section, any board member may purchase for~~
5 ~~use as the board member's primary place of residence a house~~
6 ~~constructed by the district's vocational education students on~~
7 ~~the same basis that any other person would be entitled to~~
8 ~~purchase the property. The sale of the house by the district~~
9 ~~must comply with the requirements set forth in Section 5-22 of~~
10 ~~The School Code.~~

11 (e) (Blank). ~~A contract for the procurement of public~~
12 ~~utility services by a district with a public utility company is~~
13 ~~not barred by this Section by one or more members of the board~~
14 ~~being an officer or employee of the public utility company or~~
15 ~~holding an ownership interest of no more than 7 1/2% in the~~
16 ~~public utility company, or holding an ownership interest of any~~
17 ~~size if the school district has a population of less than 7,500~~
18 ~~and the public utility's rates are approved by the Illinois~~
19 ~~Commerce Commission. An elected or appointed member of the~~
20 ~~board having such an interest shall be deemed not to have a~~
21 ~~prohibited interest under this Section.~~

22 (f) (Blank). ~~Nothing contained in this Section, including~~
23 ~~the restrictions set forth in subsections (b), (c), (d) and~~
24 ~~(e), shall preclude a contract of deposit of monies, loans or~~
25 ~~other financial services by a school district with a local bank~~
26 ~~or local savings and loan association, regardless of whether a~~

1 ~~member or members of the governing body of the school district~~
2 ~~are interested in such bank or savings and loan association as~~
3 ~~an officer or employee or as a holder of less than 7 1/2% of the~~
4 ~~total ownership interest. A member or members holding such an~~
5 ~~interest in such a contract shall not be deemed to be holding a~~
6 ~~prohibited interest for purposes of this Act. Such interested~~
7 ~~member or members of the governing body must publicly state the~~
8 ~~nature and extent of their interest during deliberations~~
9 ~~concerning the proposed award of such a contract, but shall not~~
10 ~~participate in any further deliberations concerning the~~
11 ~~proposed award. Such interested member or members shall not~~
12 ~~vote on such a proposed award. Any member or members abstaining~~
13 ~~from participation in deliberations and voting under this~~
14 ~~Section may be considered present for purposes of establishing~~
15 ~~a quorum. Award of such a contract shall require approval by a~~
16 ~~majority vote of those members presently holding office.~~
17 ~~Consideration and award of any such contract in which a member~~
18 ~~or members are interested may only be made at a regularly~~
19 ~~scheduled public meeting of the governing body of the school~~
20 ~~district.~~

21 (g) Any school board member, employee of the school
22 district, or general counsel who violates this Section is
23 guilty of a Class 3 4 felony and in addition thereto any office
24 held by such person so convicted shall become vacant and shall
25 be so declared as part of the judgment of the court.

26 (h) This Section applies in all school districts, including

1 special charter districts and districts organized under
2 Article 34 of this Code.

3 (Source: P.A. 89-244, eff. 8-4-95.)

4 (105 ILCS 5/10-9.5 new)

5 Sec. 10-9.5. Fiduciary relationship. A school board member
6 shall have a fiduciary relationship with the school district.

7 (105 ILCS 5/10-11) (from Ch. 122, par. 10-11)

8 Sec. 10-11. Vacancies. Elective offices become vacant
9 within the meaning of this Code ~~the Act~~, unless the context
10 indicates otherwise, on the happening of any of the following
11 events, before the expiration of the term of such office:

12 1. The death of the incumbent.

13 2. His or her resignation in writing filed with the
14 Secretary or Clerk of the Board.

15 3. His or her becoming a person under legal disability.

16 4. His or her ceasing to be an inhabitant of the
17 district for which he or she was elected.

18 5. His or her conviction of an infamous crime, of any
19 offense involving a violation of official oath, or of a
20 violent crime against a child.

21 6. His or her removal from office.

22 7. The decision of a competent tribunal declaring his
23 or her election void.

24 8. His ceasing to be an inhabitant of a particular area

1 from which he was elected, if the residential requirements
2 contained in Section 10-10.5, 11E-35, or 12-2 of this Code
3 are violated.

4 (9) His or her holding any other public office, whether
5 federal, State, or local, other than that of notary public
6 or member of the National Guard.

7 No elective office except as herein otherwise provided
8 becomes vacant until the successor of the incumbent of such
9 office has been appointed or elected, as the case may be, and
10 qualified. The successor shall have the same type of
11 residential qualifications as his or her predecessor and, if
12 the residential requirements contained in Section 10-10.5,
13 11E-35, or 12-2 of this Code apply, the successor, whether
14 elected or appointed by the remaining members or a regional
15 superintendent, shall be an inhabitant of the particular area
16 from which his or her predecessor was elected.

17 (Source: P.A. 94-1019, eff. 7-10-06.)

18 (105 ILCS 5/10-20.21) (from Ch. 122, par. 10-20.21)

19 Sec. 10-20.21. Contracts.

20 (a) To award all contracts for purchase of supplies,
21 materials or work or contracts with private carriers for
22 transportation of pupils involving an expenditure in excess of
23 \$10,000 to the lowest responsible bidder, considering
24 conformity with specifications, terms of delivery, quality and
25 serviceability, after due advertisement, except the following:

1 (i) (blank); ~~contracts for the services of individuals~~
2 ~~possessing a high degree of professional skill where the~~
3 ~~ability or fitness of the individual plays an important part;~~

4 (ii) contracts for the printing of finance committee reports
5 and departmental reports; (iii) contracts for the printing or
6 engraving of bonds, tax warrants and other evidences of
7 indebtedness; (iv) contracts for the purchase of perishable
8 foods and perishable beverages; (v) contracts for materials and
9 work which have been awarded to the lowest responsible bidder
10 after due advertisement, but due to unforeseen revisions, not
11 the fault of the contractor for materials and work, must be
12 revised causing expenditures not in excess of 10% of the
13 contract price; (vi) contracts for the maintenance or servicing
14 of, or provision of repair parts for, equipment which are made
15 with the manufacturer or authorized service agent of that
16 equipment where the provision of parts, maintenance, or
17 servicing can best be performed by the manufacturer or
18 authorized service agent; (vii) purchases and contracts for the
19 use, purchase, delivery, movement, or installation of data
20 processing equipment, software, or services and
21 telecommunications and interconnect equipment, software, and
22 services; (viii) contracts for duplicating machines and
23 supplies; (ix) contracts for the purchase of natural gas when
24 the cost is less than that offered by a public utility; (x)
25 purchases of equipment previously owned by some entity other
26 than the district itself; (xi) contracts for repair,

1 maintenance, remodeling, renovation, or construction, or a
2 single project involving an expenditure not to exceed \$10,000
3 ~~\$20,000~~ and not involving a change or increase in the size,
4 type, or extent of an existing facility; (xii) contracts for
5 goods or services procured from another governmental agency;
6 (xiii) contracts for goods or services which are economically
7 procurable from only one source, such as for the purchase of
8 magazines, books, periodicals, pamphlets and reports, and for
9 utility services such as water, light, heat, telephone or
10 telegraph; (xiv) where funds are expended in an emergency and
11 such emergency expenditure is approved by 3/4 of the members of
12 the board; and (xv) State master contracts authorized under
13 Article 28A of this Code.

14 All competitive bids for contracts involving an
15 expenditure in excess of \$10,000 must be sealed by the bidder
16 and must be opened by a member or employee of the school board
17 at a public bid opening at which the contents of the bids must
18 be announced. Each bidder must receive at least 3 days' notice
19 of the time and place of the bid opening. For purposes of this
20 Section due advertisement includes, but is not limited to, at
21 least one public notice at least 10 days before the bid date in
22 a newspaper published in the district, or if no newspaper is
23 published in the district, in a newspaper of general
24 circulation in the area of the district. State master contracts
25 and certified education purchasing contracts, as defined in
26 Article 28A of this Code, are not subject to the requirements

1 of this paragraph.

2 (b) To require, as a condition of any contract for goods
3 and services, that persons bidding for and awarded a contract
4 and all affiliates of the person collect and remit Illinois Use
5 Tax on all sales of tangible personal property into the State
6 of Illinois in accordance with the provisions of the Illinois
7 Use Tax Act regardless of whether the person or affiliate is a
8 "retailer maintaining a place of business within this State" as
9 defined in Section 2 of the Use Tax Act. For purposes of this
10 Section, the term "affiliate" means any entity that (1)
11 directly, indirectly, or constructively controls another
12 entity, (2) is directly, indirectly, or constructively
13 controlled by another entity, or (3) is subject to the control
14 of a common entity. For purposes of this subsection (b), an
15 entity controls another entity if it owns, directly or
16 individually, more than 10% of the voting securities of that
17 entity. As used in this subsection (b), the term "voting
18 security" means a security that (1) confers upon the holder the
19 right to vote for the election of members of the board of
20 directors or similar governing body of the business or (2) is
21 convertible into, or entitles the holder to receive upon its
22 exercise, a security that confers such a right to vote. A
23 general partnership interest is a voting security.

24 To require that bids and contracts include a certification
25 by the bidder or contractor that the bidder or contractor is
26 not barred from bidding for or entering into a contract under

1 this Section and that the bidder or contractor acknowledges
2 that the school board may declare the contract void if the
3 certification completed pursuant to this subsection (b) is
4 false.

5 (b-5) To require all contracts and agreements that pertain
6 to goods and services and that are intended to generate
7 additional revenue and other remunerations for the school
8 district in excess of \$1,000, including without limitation
9 vending machine contracts, sports and other attire, class
10 rings, and photographic services, to be approved by the school
11 board. The school board shall file as an attachment to its
12 annual budget a report, in a form as determined by the State
13 Board of Education, indicating for the prior year the name of
14 the vendor, the product or service provided, and the actual net
15 revenue and non-monetary remuneration from each of the
16 contracts or agreements. In addition, the report shall indicate
17 for what purpose the revenue was used and how and to whom the
18 non-monetary remuneration was distributed.

19 (c) If the State education purchasing entity creates a
20 master contract as defined in Article 28A of this Code, then
21 the State education purchasing entity shall notify school
22 districts of the existence of the master contract.

23 (d) In purchasing supplies, materials, equipment, or
24 services that are not subject to subsection (c) of this
25 Section, before a school district solicits bids or awards a
26 contract, the district may review and consider as a bid under

1 subsection (a) of this Section certified education purchasing
2 contracts that are already available through the State
3 education purchasing entity.

4 (e) To discourage vendor influence over school board
5 elections and referendums, each school district shall
6 establish a database, which must be publicly available, listing
7 all vendors who have contracts with the school district.

8 (Source: P.A. 93-25, eff. 6-20-03; 93-1036, eff. 9-14-04;
9 94-714, eff. 7-1-06.)

10 (105 ILCS 5/10-21.4) (from Ch. 122, par. 10-21.4)

11 Sec. 10-21.4. Superintendent - Duties. Except in districts
12 in which there is only one school with less than four teachers,
13 to employ a superintendent who shall have charge of the
14 administration of the schools under the direction of the board
15 of education. In addition to the administrative duties, the
16 superintendent shall make recommendations to the board
17 concerning the budget, building plans, the locations of sites,
18 the selection, retention and dismissal of teachers and all
19 other employees (except a general counsel), the selection of
20 textbooks, instructional material and courses of study.
21 However, in districts under a Financial Oversight Panel
22 pursuant to Section 1A-8 for violating a financial plan, the
23 duties and responsibilities of the superintendent in relation
24 to the financial and business operations of the district shall
25 be approved by the Panel. In the event the Board refuses or

1 fails to follow a directive or comply with an information
2 request of the Panel, the performance of those duties shall be
3 subject to the direction of the Panel. The superintendent shall
4 also notify the State Board of Education, the board and the
5 chief administrative official, other than the alleged
6 perpetrator himself, in the school where the alleged
7 perpetrator serves, that any person who is employed in a school
8 or otherwise comes into frequent contact with children in the
9 school has been named as a perpetrator in an indicated report
10 filed pursuant to the Abused and Neglected Child Reporting Act,
11 approved June 26, 1975, as amended. The superintendent shall
12 keep or cause to be kept the records and accounts as directed
13 and required by the board, aid in making reports required by
14 the board, and perform such other duties as the board may
15 delegate to him.

16 In addition, in January of each year, beginning in 1990,
17 each superintendent shall report to the regional
18 superintendent of schools of the educational service region in
19 which the school district served by the superintendent is
20 located, the number of high school students in the district who
21 are enrolled in accredited courses (for which high school
22 credit will be awarded upon successful completion of the
23 courses) at any community college, together with the name and
24 number of the course or courses which each such student is
25 taking.

26 The provisions of this section shall also apply to board of

1 director districts.

2 Notice of intent not to renew a contract must be given in
3 writing stating the specific reason therefor by April 1 of the
4 contract year unless the contract specifically provides
5 otherwise. Failure to do so will automatically extend the
6 contract for an additional year. Within 10 days after receipt
7 of notice of intent not to renew a contract, the superintendent
8 may request a closed session hearing on the dismissal. At the
9 hearing the superintendent has the privilege of presenting
10 evidence, witnesses and defenses on the grounds for dismissal.
11 The provisions of this paragraph shall not apply to a district
12 under a Financial Oversight Panel pursuant to Section 1A-8 for
13 violating a financial plan.

14

15 (Source: P.A. 89-572, eff. 7-30-96.)

16 (105 ILCS 5/10-21.4b new)

17 Sec. 10-21.4b. General counsel. To employ a general counsel
18 if the school board deems it warranted.

19 (105 ILCS 5/33-5) (from Ch. 122, par. 33-5)

20 Sec. 33-5. Interest in contracts or transactions. Section
21 10-9 of this Code shall apply to board members, employees of
22 the school district, and the general counsel. ~~No member or~~
23 ~~employee of the board shall be directly or indirectly~~
24 ~~interested in any contract, work, or business of the district,~~

~~er in the sale of any article, the expense, price or
consideration of which is paid by the district; nor in the
purchase of any real estate or property belonging to the
district, or which shall be sold by virtue of legal process at
the suit of the district. Whoever violates any provision of
this Section shall be guilty of a Class A misdemeanor.~~

(Source: P.A. 77-2267.)

(105 ILCS 5/34-4.2 new)

Sec. 34-4.2. Fiduciary relationship. A board member shall
have a fiduciary relationship with the school district.

(105 ILCS 5/34-4.3 new)

Sec. 34-4.3. Removal from office. A board member may be
removed from office for negligent failure to perform his or her
official duties, any violation of this Code, or a breach of
fiduciary duty.

(105 ILCS 5/34-21.3) (from Ch. 122, par. 34-21.3)

Sec. 34-21.3. Contracts.

(a) The board shall by record vote let all contracts (other
than those excepted by Section 10-20.21 of The School Code) for
supplies, materials, work, and contracts with private carriers
for transportation of pupils, involving an expenditure in
excess of \$10,000 by competitive bidding as provided in Section
10-20.21 of The School Code.

1 The board may delegate to the general superintendent of
2 schools, by resolution, the authority to approve contracts in
3 amounts of \$10,000 or less.

4 To discourage vendor influence over referendums, the
5 school district shall establish a database, which must be
6 publicly available, listing all vendors who have contracts with
7 the school district.

8 (b) Section 10-9 of this Code shall apply to board members,
9 employees of the school district, and the general counsel.

10 (c) For a period of one year from and after the expiration
11 or other termination of his or her term of office as a member
12 of the board: (i) the former board member shall not be eligible
13 for employment nor be employed by the board, a local school
14 council, an attendance center, or any other subdivision or
15 agent of the board or the school district governed by the
16 board, and (ii) neither the board nor the chief purchasing
17 officer shall let or delegate authority to let any contract for
18 services, employment, or other work to the former board member
19 or to any corporation, partnership, association, sole
20 proprietorship, or other entity other than publicly traded
21 companies from which the former board member receives an annual
22 income, dividends, or other compensation in excess of \$1,500.
23 Any contract that is entered into by or under a delegation of
24 authority from the board or the chief purchasing officer shall
25 contain a provision stating that the contract is not legally
26 binding on the board if entered into in violation of the

1 provisions of this subsection (c) ~~paragraph~~.

2 (d) The ~~In addition, the~~ State Board of Education, in
3 consultation with the board, shall (i) review existing conflict
4 of interest and disclosure laws or regulations that are
5 applicable to the executive officers and governing boards of
6 school districts organized under this Article and school
7 districts generally, (ii) determine what additional disclosure
8 and conflict of interest provisions would enhance the
9 reputation and fiscal integrity of the board and the procedure
10 under which contracts for goods and services are let, and (iii)
11 develop appropriate reporting forms and procedures applicable
12 to the executive officers, governing board, and other officials
13 of the school district.

14 (Source: P.A. 89-15, eff. 5-30-95.)

15 Section 90. The State Mandates Act is amended by adding
16 Section 8.31 as follows:

17 (30 ILCS 805/8.31 new)

18 Sec. 8.31. Exempt mandate. Notwithstanding Sections 6 and 8
19 of this Act, no reimbursement by the State is required for the
20 implementation of any mandate created by this amendatory Act of
21 the 95th General Assembly.

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