

# HB2637



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB2637

by Rep. Fred Crespo

#### SYNOPSIS AS INTRODUCED:

105 ILCS 5/10-20.21

Amends the School Code. With respect to the requirement that all contracts for the purchase of supplies and materials or work involving an expenditure in excess of \$25,000 or a lower amount as required by school board policy be awarded to the lowest responsible bidder, exempts contracts for goods or services procured through a cooperative organized in any state in the United States of America or the District of Columbia that awards contracts by a competitive process and whose membership is limited to governmental agencies. Effective immediately.

LRB099 05472 NHT 27022 b

FISCAL NOTE ACT  
MAY APPLY

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 changing Section  
5 10-20.21 as follows:

6 (105 ILCS 5/10-20.21)

7 Sec. 10-20.21. Contracts.

8 (a) To award all contracts for purchase of supplies and  
9 materials or work involving an expenditure in excess of \$25,000  
10 or a lower amount as required by board policy to the lowest  
11 responsible bidder, considering conformity with  
12 specifications, terms of delivery, quality and serviceability,  
13 after due advertisement, except the following: (i) contracts  
14 for the services of individuals possessing a high degree of  
15 professional skill where the ability or fitness of the  
16 individual plays an important part; (ii) contracts for the  
17 printing of finance committee reports and departmental  
18 reports; (iii) contracts for the printing or engraving of  
19 bonds, tax warrants and other evidences of indebtedness; (iv)  
20 contracts for the purchase of perishable foods and perishable  
21 beverages; (v) contracts for materials and work which have been  
22 awarded to the lowest responsible bidder after due  
23 advertisement, but due to unforeseen revisions, not the fault

1 of the contractor for materials and work, must be revised  
2 causing expenditures not in excess of 10% of the contract  
3 price; (vi) contracts for the maintenance or servicing of, or  
4 provision of repair parts for, equipment which are made with  
5 the manufacturer or authorized service agent of that equipment  
6 where the provision of parts, maintenance, or servicing can  
7 best be performed by the manufacturer or authorized service  
8 agent; (vii) purchases and contracts for the use, purchase,  
9 delivery, movement, or installation of data processing  
10 equipment, software, or services and telecommunications and  
11 interconnect equipment, software, and services; (viii)  
12 contracts for duplicating machines and supplies; (ix)  
13 contracts for the purchase of natural gas when the cost is less  
14 than that offered by a public utility; (x) purchases of  
15 equipment previously owned by some entity other than the  
16 district itself; (xi) contracts for repair, maintenance,  
17 remodeling, renovation, or construction, or a single project  
18 involving an expenditure not to exceed \$50,000 and not  
19 involving a change or increase in the size, type, or extent of  
20 an existing facility; (xii) contracts for goods or services  
21 procured from another governmental agency or through a  
22 cooperative organized in any state in the United States of  
23 America or the District of Columbia that awards contracts by a  
24 competitive process and whose membership is limited to  
25 governmental agencies; (xiii) contracts for goods or services  
26 which are economically procurable from only one source, such as

1 for the purchase of magazines, books, periodicals, pamphlets  
2 and reports, and for utility services such as water, light,  
3 heat, telephone or telegraph; (xiv) where funds are expended in  
4 an emergency and such emergency expenditure is approved by 3/4  
5 of the members of the board; (xv) State master contracts  
6 authorized under Article 28A of this Code; and (xvi) contracts  
7 providing for the transportation of pupils, which contracts  
8 must be advertised in the same manner as competitive bids and  
9 awarded by first considering the bidder or bidders most able to  
10 provide safety and comfort for the pupils, stability of  
11 service, and any other factors set forth in the request for  
12 proposal regarding quality of service, and then price. However,  
13 at no time shall a cause of action lie against a school board  
14 for awarding a pupil transportation contract per the standards  
15 set forth in this subsection (a) unless the cause of action is  
16 based on fraudulent conduct.

17 All competitive bids for contracts involving an  
18 expenditure in excess of \$25,000 or a lower amount as required  
19 by board policy must be sealed by the bidder and must be opened  
20 by a member or employee of the school board at a public bid  
21 opening at which the contents of the bids must be announced.  
22 Each bidder must receive at least 3 days' notice of the time  
23 and place of the bid opening. For purposes of this Section due  
24 advertisement includes, but is not limited to, at least one  
25 public notice at least 10 days before the bid date in a  
26 newspaper published in the district, or if no newspaper is

1 published in the district, in a newspaper of general  
2 circulation in the area of the district. State master contracts  
3 and certified education purchasing contracts, as defined in  
4 Article 28A of this Code, are not subject to the requirements  
5 of this paragraph.

6 Under this Section, the acceptance of bids sealed by a  
7 bidder and the opening of these bids at a public bid opening  
8 may be permitted by an electronic process for communicating,  
9 accepting, and opening competitive bids. However, bids for  
10 construction purposes are prohibited from being communicated,  
11 accepted, or opened electronically. An electronic bidding  
12 process must provide for, but is not limited to, the following  
13 safeguards:

14 (1) On the date and time certain of a bid opening, the  
15 primary person conducting the competitive, sealed,  
16 electronic bid process shall log onto a specified database  
17 using a unique username and password previously assigned to  
18 the bidder to allow access to the bidder's specific bid  
19 project number.

20 (2) The specified electronic database must be on a  
21 network that (i) is in a secure environment behind a  
22 firewall; (ii) has specific encryption tools; (iii)  
23 maintains specific intrusion detection systems; (iv) has  
24 redundant systems architecture with data storage back-up,  
25 whether by compact disc or tape; and (v) maintains a  
26 disaster recovery plan.

1 It is the legislative intent of Public Act 96-841 to maintain  
2 the integrity of the sealed bidding process provided for in  
3 this Section, to further limit any possibility of bid-rigging,  
4 to reduce administrative costs to school districts, and to  
5 effect efficiencies in communications with bidders.

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

1 general partnership interest is a voting security.

2 To require that bids and contracts include a certification  
3 by the bidder or contractor that the bidder or contractor is  
4 not barred from bidding for or entering into a contract under  
5 this Section and that the bidder or contractor acknowledges  
6 that the school board may declare the contract void if the  
7 certification completed pursuant to this subsection (b) is  
8 false.

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

23 (c) If the State education purchasing entity creates a  
24 master contract as defined in Article 28A of this Code, then  
25 the State education purchasing entity shall notify school  
26 districts of the existence of the master contract.

1           (d) In purchasing supplies, materials, equipment, or  
2 services that are not subject to subsection (c) of this  
3 Section, before a school district solicits bids or awards a  
4 contract, the district may review and consider as a bid under  
5 subsection (a) of this Section certified education purchasing  
6 contracts that are already available through the State  
7 education purchasing entity.

8           (Source: P.A. 96-392, eff. 1-1-10; 96-841, eff. 12-23-09;  
9 96-1000, eff. 7-2-10; 97-951, eff. 8-13-12.)

10           Section 99. Effective date. This Act takes effect upon  
11 becoming law.