

SENATE BILL 492

P2

8lr1248
CF HB 776

By: **Senators Zucker, Conway, Kagan, Madaleno, Nathan-Pulliam, Pinsky, Ramirez, Robinson, and Young**

Introduced and read first time: January 29, 2018

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 16, 2018

CHAPTER _____

1 AN ACT concerning

2 **~~Procurement – Responsible Workforce Development Percentage Price~~**
3 **~~Preference Act~~ Board of Public Works – Workforce Health Care Study**

4 FOR the purpose of requiring the Board of Public Works to ~~adopt regulations to require~~
5 ~~certain units to establish a certain responsible workforce development percentage~~
6 ~~price preference; requiring a procurement officer to apply a certain responsible~~
7 ~~workforce development percentage price preference if a certain certification is~~
8 ~~submitted; requiring certain responsible bidders and subcontractors to certify on a~~
9 ~~certain form that certain health care expenses were at least a certain percentage of~~
10 ~~certain wages paid for during a certain period of time before the submission of a~~
11 ~~certain bid; requiring the Department of General Services to collaborate with the~~
12 ~~Department of Labor, Licensing, and Regulation to develop a certain form;~~
13 ~~authorizing a procurement officer to require a responsible bidder or subcontractor to~~
14 ~~submit certain records under certain circumstances; prohibiting a certain~~
15 ~~responsible workforce development percentage price preference from being applied~~
16 ~~under certain circumstances; requiring certain health care expenses paid by a~~
17 ~~certain bidder or subcontractor to be at least a certain percentage of certain wages~~
18 ~~paid during a certain period of time after the award of a certain contract; authorizing~~
19 ~~a procurement officer to void a certain contract under certain circumstances;~~
20 ~~requiring a certain bidder or subcontractor that fails to comply with a certain~~
21 ~~provision of law to pay a certain unit a certain amount; prohibiting a certain person~~
22 ~~or entity from providing certain false information; establishing certain civil penalties~~
23 ~~under certain circumstances; authorizing certain action to be brought by certain~~
24 ~~persons; defining certain terms; and generally relating to percentage price~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~preferences and procurement collect certain information related to health care for certain bidders; requiring the Board to direct certain agencies to collect certain information under certain circumstances; requiring the Board to report certain information to certain committees of the General Assembly on or before a certain date; and generally relating to the Board of Public Works.~~

~~BY adding to~~

~~Article — State Finance and Procurement~~

~~Section 14-701 through 14-705 to be under the new subtitle “Subtitle 7. Responsible Workforce Development Percentage Price Preference”~~

~~Annotated Code of Maryland~~

~~(2015 Replacement Volume and 2017 Supplement)~~

~~Preamble~~

~~WHEREAS, The Maryland General Assembly finds that the State and the State’s political subdivisions incur substantial direct and indirect expenses when employers do not pay for employee health care expenses and that it makes economic sense for State agencies to offer a bid preference to contractors that pay for employee health care expenses for employees in Maryland; now, therefore,~~

~~SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:~~

~~Article — State Finance and Procurement~~

~~SUBTITLE 7. RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE PREFERENCE.~~

~~14-701.~~

~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:~~

~~(B) “AGGREGATE EMPLOYEE HEALTH CARE EXPENSES” MEANS ALL EMPLOYEE HEALTH CARE EXPENSES PAID BY A RESPONSIBLE BIDDER OR SUBCONTRACTOR.~~

~~(C) (1) “AGGREGATE SOCIAL SECURITY WAGES” MEANS ALL WAGES PAID BY A RESPONSIBLE BIDDER OR SUBCONTRACTOR TO AN EMPLOYEE FOR THE PERIOD OF TIME IN WHICH THE WAGES ARE PAID.~~

~~(2) “AGGREGATE SOCIAL SECURITY WAGES” DOES NOT INCLUDE WAGES THAT ARE ABOVE THE FEDERAL SOCIAL SECURITY CONTRIBUTION AND BENEFIT BASE.~~

1 ~~(D) "EMPLOYEE" MEANS AN INDIVIDUAL WHO IS EMPLOYED TO WORK IN~~
2 ~~THE STATE BY A RESPONSIBLE BIDDER OR SUBCONTRACTOR.~~

3 ~~(E) (1) "EMPLOYEE HEALTH CARE EXPENSES" MEANS ANY COSTS FOR~~
4 ~~HEALTH CARE SERVICES THAT ARE PAID BY A RESPONSIBLE BIDDER OR~~
5 ~~SUBCONTRACTOR TO AN EMPLOYEE.~~

6 ~~(2) "EMPLOYEE HEALTH CARE EXPENSES" INCLUDES:~~

7 ~~(I) CONTRIBUTIONS MADE ON BEHALF OF AN EMPLOYEE TO A~~
8 ~~HEALTH SAVINGS ACCOUNT AS DEFINED UNDER § 223 OF THE INTERNAL REVENUE~~
9 ~~CODE OR TO ANY OTHER ACCOUNT HAVING A SUBSTANTIALLY EQUIVALENT~~
10 ~~PURPOSE OR EFFECT WITHOUT REGARD TO WHETHER THE CONTRIBUTIONS~~
11 ~~QUALIFY FOR A TAX DEDUCTION OR ARE EXCLUDABLE FROM EMPLOYEE INCOME;~~

12 ~~(II) REIMBURSEMENTS TO AN EMPLOYEE FOR EXPENSES~~
13 ~~INCURRED IN THE PURCHASE OF HEALTH CARE SERVICES;~~

14 ~~(III) PAYMENTS TO A THIRD PARTY FOR THE PURPOSE OF~~
15 ~~PROVIDING HEALTH CARE SERVICES FOR AN EMPLOYEE;~~

16 ~~(IV) PAYMENTS UNDER A COLLECTIVE BARGAINING AGREEMENT~~
17 ~~FOR THE PURPOSE OF PROVIDING HEALTH CARE SERVICES FOR AN EMPLOYEE; AND~~

18 ~~(V) COSTS INCURRED IN THE DIRECT DELIVERY OF HEALTH~~
19 ~~CARE SERVICES TO AN EMPLOYEE.~~

20 ~~(F) "HEALTH CARE SERVICES" MEANS MEDICAL CARE, SERVICES, OR~~
21 ~~GOODS THAT:~~

22 ~~(1) QUALIFY AS A TAX DEDUCTIBLE EXPENSE UNDER § 213 OF THE~~
23 ~~INTERNAL REVENUE CODE; OR~~

24 ~~(2) HAVE A SUBSTANTIALLY EQUIVALENT PURPOSE TO MEDICAL~~
25 ~~CARE, SERVICES, OR GOODS THAT QUALIFY AS A TAX DEDUCTIBLE EXPENSE UNDER~~
26 ~~§ 213 OF THE INTERNAL REVENUE CODE.~~

27 ~~(G) "RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE~~
28 ~~PREFERENCE" MEANS THE PERCENT BY WHICH A RESPONSIVE BID SUBMITTED WITH~~
29 ~~THE CERTIFICATION OF EMPLOYEE HEALTH CARE EXPENSES REQUIRED UNDER §~~
30 ~~14-703(A) AND (B) OF THIS SUBTITLE MAY EXCEED THE LOWEST RESPONSIVE BID~~
31 ~~THAT WAS NOT SUBMITTED WITH THE CERTIFICATION OF EMPLOYEE HEALTH CARE~~
32 ~~EXPENSES REQUIRED UNDER § 14-703(A) AND (B) OF THIS SUBTITLE.~~

1 ~~(H) "SUBCONTRACTOR" MEANS A PERSON LISTED ON A RESPONSIVE BID TO~~
2 ~~PROVIDE GOODS OR SERVICES UNDER A PORTION OF A CONTRACT WITH THE STATE.~~

3 ~~14-702.~~

4 ~~THE BOARD SHALL ADOPT REGULATIONS THAT REQUIRE EACH UNIT TO~~
5 ~~ESTABLISH A RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE~~
6 ~~PREFERENCE OF AT LEAST 4%.~~

7 ~~14-703.~~

8 ~~(A) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A~~
9 ~~PROCUREMENT OFFICER SHALL APPLY A RESPONSIBLE WORKFORCE~~
10 ~~DEVELOPMENT PERCENTAGE PRICE PREFERENCE TO A RESPONSIVE BID IF THE~~
11 ~~RESPONSIBLE BIDDER AND EACH SUBCONTRACTOR SUBMIT TO THE PROCUREMENT~~
12 ~~OFFICER THE CERTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION.~~

13 ~~(B) THE RESPONSIBLE BIDDER AND EACH SUBCONTRACTOR SHALL~~
14 ~~CERTIFY ON A FORM REQUIRED BY THE DEPARTMENT OF GENERAL SERVICES THAT~~
15 ~~THE AGGREGATE EMPLOYEE HEALTH CARE EXPENSES PAID BY THE BIDDER OR~~
16 ~~SUBCONTRACTOR WERE AT LEAST 6.5% OF THE AGGREGATE SOCIAL SECURITY~~
17 ~~WAGES PAID BY THE BIDDER OR SUBCONTRACTOR DURING:~~

18 ~~(1) THE 12-MONTH PERIOD IMMEDIATELY BEFORE THE SUBMISSION~~
19 ~~OF THE BID; OR~~

20 ~~(2) IF THE BIDDER OR A SUBCONTRACTOR DID NOT HAVE AN~~
21 ~~EMPLOYEE IN THE STATE FOR THE ENTIRE 12-MONTH PERIOD IMMEDIATELY~~
22 ~~BEFORE SUBMISSION OF THE BID, FOR THE PERIOD OF TIME BETWEEN 3 MONTHS~~
23 ~~AND 12 MONTHS IMMEDIATELY BEFORE SUBMISSION OF THE BID IN WHICH THE~~
24 ~~BIDDER OR SUBCONTRACTOR HAD AN EMPLOYEE IN THE STATE.~~

25 ~~(C) THE DEPARTMENT OF GENERAL SERVICES SHALL COLLABORATE WITH~~
26 ~~THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION TO DEVELOP THE~~
27 ~~FORM REQUIRED FOR CERTIFICATION UNDER SUBSECTION (B) OF THIS SECTION.~~

28 ~~(D) A PROCUREMENT OFFICER MAY REQUIRE A RESPONSIBLE BIDDER OR~~
29 ~~SUBCONTRACTOR TO SUBMIT RECORDS TO THE PROCUREMENT OFFICER THAT ARE~~
30 ~~SUFFICIENT TO SUPPORT THE CERTIFICATION THAT THE BIDDER OR~~
31 ~~SUBCONTRACTOR SUBMITTED IN ACCORDANCE WITH SUBSECTION (B) OF THIS~~
32 ~~SECTION.~~

33 ~~(E) A RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE~~
34 ~~PREFERENCE MAY NOT BE APPLIED TO A BID IF:~~

1 ~~(1) A BIDDER OR SUBCONTRACTOR FAILS TO SUBMIT THE RECORDS~~
2 ~~REQUIRED UNDER SUBSECTION (D) OF THIS SECTION WITHIN A REASONABLE~~
3 ~~PERIOD OF TIME; OR~~

4 ~~(2) A BIDDER OR SUBCONTRACTOR HAS NOT EMPLOYED AN~~
5 ~~INDIVIDUAL IN THE STATE FOR AT LEAST 3 MONTHS IMMEDIATELY BEFORE THE~~
6 ~~SUBMISSION OF THE BID.~~

7 ~~14-704.~~

8 ~~(A) FOR AT LEAST 1 YEAR AFTER THE AWARD OF A CONTRACT FOR A~~
9 ~~RESPONSIVE BID TO WHICH A RESPONSIBLE WORKFORCE DEVELOPMENT~~
10 ~~PERCENTAGE PRICE PREFERENCE WAS APPLIED, THE AGGREGATE EMPLOYEE~~
11 ~~HEALTH CARE EXPENSES PAID BY THE RESPONSIBLE BIDDER AWARDED THE~~
12 ~~CONTRACT AND EACH SUBCONTRACTOR SHALL BE AT LEAST 6.5% OF THE~~
13 ~~AGGREGATE SOCIAL SECURITY WAGES PAID BY THE BIDDER OR SUBCONTRACTOR.~~

14 ~~(B) A PROCUREMENT OFFICER MAY REQUIRE THE RESPONSIBLE BIDDER~~
15 ~~AWARDED A CONTRACT OR SUBCONTRACTOR TO SUBMIT RECORDS TO THE~~
16 ~~PROCUREMENT OFFICER THAT ARE SUFFICIENT TO SHOW COMPLIANCE WITH~~
17 ~~SUBSECTION (A) OF THIS SECTION.~~

18 ~~(C) (1) IF THE RESPONSIBLE BIDDER AWARDED A CONTRACT OR~~
19 ~~SUBCONTRACTOR FAILS TO SUBMIT THE RECORDS REQUIRED UNDER SUBSECTION~~
20 ~~(B) OF THIS SECTION WITHIN A REASONABLE PERIOD OF TIME, THE PROCUREMENT~~
21 ~~OFFICER MAY VOID THE CONTRACT.~~

22 ~~(2) IF THE RESPONSIBLE BIDDER AWARDED A CONTRACT OR~~
23 ~~SUBCONTRACTOR OTHERWISE FAILS TO COMPLY WITH SUBSECTION (A) OF THIS~~
24 ~~SECTION, THE BIDDER OR SUBCONTRACTOR SHALL PAY THE UNIT THAT AWARDED~~
25 ~~THE CONTRACT AN AMOUNT EQUAL TO TWICE THE AMOUNT THAT THE BIDDER OR~~
26 ~~SUBCONTRACTOR WOULD HAVE PAID FOR HEALTH CARE EXPENSES IF THE BIDDER~~
27 ~~OR SUBCONTRACTOR HAD COMPLIED WITH THE REQUIREMENTS OF SUBSECTION (A)~~
28 ~~OF THIS SECTION.~~

29 ~~14-705.~~

30 ~~(A) A PERSON OR AN ENTITY MAY NOT PROVIDE FALSE INFORMATION~~
31 ~~UNDER THIS SUBTITLE.~~

32 ~~(B) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION SHALL BE~~
33 ~~SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN \$2,500 AND NOT EXCEEDING~~
34 ~~\$25,000, FOR EACH VIOLATION.~~

1 ~~(c) AN ACTION FOR A CIVIL PENALTY UNDER THIS SECTION MAY BE~~
 2 ~~BROUGHT BY:~~

3 ~~(1) THE UNIT THAT AWARDED THE CONTRACT, IN ITS OWN NAME;~~

4 ~~(2) THE ATTORNEY GENERAL, IN THE NAME OF THE STATE; OR~~

5 ~~(3) A STATE'S ATTORNEY, IN THE NAME OF THE STATE.~~

6 (a) The Board of Public Works shall collect the following information for all
 7 construction-related, ~~nonscaled competitive~~ competitive sealed bids for projects for a period
 8 of 3 months following the enactment of this Act:

9 (1) whether the bidding company and any subcontractor provide employee
 10 health care coverage on projects that require a prevailing wage;

11 (2) for the year preceding the bid, what the percentage of total Social
 12 Security wages was, as well as the total amount spent on employee health care;

13 (3) what percentage of total health insurance coverage costs are paid by
 14 the insurance company, versus an employee, what the type and scope of the coverage are,
 15 and what the average percentage of the monthly premium paid by the bidder or
 16 subcontractor is; and

17 (4) what the average percentage of monthly premium paid by the bidder's
 18 employee or subcontractor's employee was, and the average per employee deductible for
 19 each health care plan offered.

20 (b) The Board of Public Works shall direct any relevant agency to include in any
 21 request for construction-related, ~~nonscaled competitive~~ competitive sealed bids the
 22 information required under subsection (a) of this section.

23 (c) On or before November 1, 2018, the Board of Public Works shall report the
 24 information required under this Act to the Senate Education, Health, and Environmental
 25 Affairs Committee and the House Health and Government Operations Committee, in
 26 accordance with § 2-1246 of the State Government Article.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
 28 1, 2018.