

SENATE BILL 433

P2

9lr2265
CF HB 680

By: **Senators Zucker, Beidle, Elfreth, Guzzone, Hayes, Kagan, Klausmeier, Kramer, Lam, McCray, Nathan-Pulliam, Pinsky, Rosapepe, and Young**

Introduced and read first time: February 1, 2019

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 15, 2019

CHAPTER _____

1 AN ACT concerning

2 ~~Responsible Workforce Development Percentage Price Preference Act~~
3 ~~State Procurement – State Funded Construction Projects – Payment of~~
4 ~~Employee Health Care Expenses~~

5 FOR the purpose of requiring the Board of Public Works to adopt regulations to require
6 certain ~~units to establish a certain responsible workforce development percentage~~
7 ~~price preference; requiring a procurement officer to apply a certain responsible~~
8 ~~workforce development percentage price preference if a certain certification is~~
9 ~~submitted or if the bidder is a minority business enterprise; requiring certain~~
10 ~~responsible bidders and subcontractors to certify on a certain form that certain~~
11 ~~health care expenses were at least a certain percentage of certain wages paid for~~
12 ~~during a certain period of time before the submission of a certain bid; bidders,~~
13 ~~contractors, and subcontractors to pay certain employee health care expenses;~~
14 ~~requiring the Department of General Services, by regulation, to establish certain~~
15 ~~procedures to certify that a bidder, contractor, or subcontractor pays certain~~
16 ~~employee health care expenses; establishing the methods by which a bidder,~~
17 ~~contractor, or subcontractor demonstrates the payment of certain employee health~~
18 ~~care expenses; authorizing a bidder, contractor, or subcontractor to demonstrate the~~
19 ~~payment of employee health care expenses in a certain manner on or before a certain~~
20 ~~date; requiring the Department of General Services to collaborate with the~~
21 ~~Department of Labor, Licensing, and Regulation to develop a certain form;~~
22 ~~authorizing a procurement officer to require a responsible bidder or subcontractor to~~
23 ~~submit certain records under certain circumstances; prohibiting a certain~~
24 ~~responsible workforce development percentage price preference from being applied~~

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.



~~under certain circumstances; requiring certain health care expenses paid by a certain bidder or subcontractor to be at least a certain percentage of certain wages paid during a certain period of time after the award of a certain contract; authorizing a procurement officer to void a certain contract under certain circumstances; requiring a certain bidder or subcontractor that fails to comply with a certain provision of law to pay a certain unit a certain amount; authorizing a procurement officer to void a contract under certain circumstances; prohibiting a certain person or entity from providing certain false information; establishing certain civil penalties under certain circumstances; authorizing certain action to be brought by certain persons; requiring the Board to collect certain information and report to certain committees of the General Assembly; defining certain terms; providing for the application of this Act; and generally relating to ~~percentage price preferences and procurement~~ procurement and the payment of employee health care expenses.~~

BY adding to

Article – State Finance and Procurement

Section ~~14-701 through 14-705~~ 17-801 through 17-804 to be under the new subtitle

~~“Subtitle 7. Responsible Workforce Development Percentage Price Preference”~~

“Subtitle 8. Responsible Payment of Employee Health Care Expenses”

Annotated Code of Maryland

(2015 Replacement Volume and 2018 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.~~

SUBTITLE 8. RESPONSIBLE PAYMENT OF EMPLOYEE HEALTH CARE EXPENSES.

~~14-701.~~ 17-801.

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

1 (B) "AGGREGATE EMPLOYEE HEALTH CARE EXPENSES" MEANS ALL
2 EMPLOYEE HEALTH CARE EXPENSES PAID BY A RESPONSIBLE BIDDER OR
3 SUBCONTRACTOR.

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

7 (2) "AGGREGATE SOCIAL SECURITY WAGES" DOES NOT INCLUDE
8 WAGES THAT ARE ABOVE THE FEDERAL SOCIAL SECURITY CONTRIBUTION AND
9 BENEFIT BASE.

10 (D) "EMPLOYEE" MEANS AN INDIVIDUAL WHO IS EMPLOYED BY A
11 RESPONSIBLE BIDDER, CONTRACTOR, OR SUBCONTRACTOR TO WORK ON OR AT THE
12 SITE OF A STATE-FUNDED CONSTRUCTION PROJECT ~~IN THE STATE BY A~~
13 RESPONSIBLE BIDDER OR SUBCONTRACTOR.

14 (E) (1) "EMPLOYEE HEALTH CARE EXPENSES" MEANS ANY COSTS FOR
15 HEALTH CARE SERVICES THAT ARE PAID BY A RESPONSIBLE BIDDER OR
16 SUBCONTRACTOR TO AN EMPLOYEE, UNLESS THE EMPLOYEE HAS COVERAGE
17 UNDER ANOTHER PLAN.

18 (2) "EMPLOYEE HEALTH CARE EXPENSES" INCLUDES:

19 (I) CONTRIBUTIONS MADE ON BEHALF OF AN EMPLOYEE TO
20 PROVIDE CREDIBLE HEALTH CARE COVERAGE IN THE FORM OF ANY GROUP POLICY,
21 CONTRACT, OR PROGRAM THAT IS WRITTEN OR ADMINISTERED BY A DISABILITY
22 INSURER, HEALTH CARE SERVICE PLAN, FRATERNAL BENEFITS SOCIETY,
23 SELF-INSURED EMPLOYER PLAN, OR ANY OTHER ENTITY, IN THIS STATE OR
24 ELSEWHERE, THAT ARRANGES OR PROVIDES MEDICAL, HOSPITAL, AND SURGICAL
25 COVERAGE NOT DESIGNATED TO SUPPLEMENT OTHER PRIVATE OR GOVERNMENTAL
26 PLANS;

27 (II) CONTRIBUTIONS MADE ON BEHALF OF AN EMPLOYEE TO A
28 HEALTH SAVINGS ACCOUNT AS DEFINED UNDER § 223 OF THE INTERNAL REVENUE
29 CODE OR TO ANY OTHER ACCOUNT HAVING A SUBSTANTIALLY EQUIVALENT
30 PURPOSE OR EFFECT WITHOUT REGARD TO WHETHER THE CONTRIBUTIONS
31 QUALIFY FOR A TAX DEDUCTION OR ARE EXCLUDABLE FROM EMPLOYEE INCOME;

32 ~~(H)~~ (III) REIMBURSEMENTS TO AN EMPLOYEE FOR EXPENSES
33 INCURRED IN THE PURCHASE OF HEALTH CARE SERVICES;

34 ~~(H)~~ (IV) PAYMENTS TO A THIRD PARTY FOR THE PURPOSE OF
35 PROVIDING HEALTH CARE SERVICES FOR AN EMPLOYEE;

1 ~~(IV)~~ (V) PAYMENTS UNDER A COLLECTIVE BARGAINING
2 AGREEMENT FOR THE PURPOSE OF PROVIDING HEALTH CARE SERVICES FOR AN
3 EMPLOYEE; AND

4 ~~(V)~~ (VI) COSTS INCURRED IN THE DIRECT DELIVERY OF
5 HEALTH CARE SERVICES TO AN EMPLOYEE.

6 (F) "HEALTH CARE SERVICES" MEANS MEDICAL CARE, SERVICES, OR
7 GOODS THAT:

8 (1) QUALIFY AS A TAX DEDUCTIBLE EXPENSE UNDER § 213 OF THE
9 INTERNAL REVENUE CODE; OR

10 (2) HAVE A SUBSTANTIALLY EQUIVALENT PURPOSE TO MEDICAL
11 CARE, SERVICES, OR GOODS THAT QUALIFY AS A TAX DEDUCTIBLE EXPENSE UNDER
12 § 213 OF THE INTERNAL REVENUE CODE.

13 ~~(G) "RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE~~
14 ~~PREFERENCE" MEANS THE PERCENT BY WHICH A RESPONSIVE BID SUBMITTED BY A~~
15 ~~RESPONSIBLE BIDDER THAT MEETS THE REQUIREMENTS UNDER § 14-703(A) OF~~
16 ~~THIS SUBTITLE MAY EXCEED THE LOWEST RESPONSIVE BID SUBMITTED BY A~~
17 ~~RESPONSIVE BIDDER THAT DOES NOT MEET THE REQUIREMENTS UNDER §~~
18 ~~14-703(A) OF THIS SUBTITLE.~~

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

22 ~~14-702, 17-802.~~

23 (A) ~~THE~~ SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE BOARD SHALL
24 ADOPT REGULATIONS THAT REQUIRE ~~EACH UNIT TO ESTABLISH A RESPONSIBLE~~
25 ~~WORKFORCE DEVELOPMENT PERCENTAGE PRICE PREFERENCE OF AT LEAST 4%.~~
26 ALL BIDDERS, CONTRACTORS, AND SUBCONTRACTORS TO PAY EMPLOYEE HEALTH
27 CARE EXPENSES AS REQUIRED BY THIS SUBTITLE.

28 (B) THIS SUBTITLE DOES NOT APPLY TO:

29 (1) A MINORITY BUSINESS ENTERPRISE, AS DEFINED UNDER TITLE
30 14, SUBTITLE 3 OF THIS ARTICLE; OR

31 (2) A SMALL BUSINESS WITH 30 OR FEWER EMPLOYEES.

1 ~~14-703, 17-803.~~

2 ~~(A) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A~~
3 ~~PROCUREMENT OFFICER SHALL APPLY A RESPONSIBLE WORKFORCE~~
4 ~~DEVELOPMENT PERCENTAGE PRICE PREFERENCE TO A RESPONSIVE BID IF:~~

5 ~~(1) THE RESPONSIBLE BIDDER AND EACH SUBCONTRACTOR SUBMIT~~
6 ~~TO THE PROCUREMENT OFFICER THE CERTIFICATION REQUIRED UNDER~~
7 ~~SUBSECTION (B) OF THIS SECTION; OR~~

8 ~~(2) THE RESPONSIBLE BIDDER IS A MINORITY BUSINESS ENTERPRISE~~
9 ~~UNDER § 14-301 OF THIS TITLE.~~

10 ~~(B) A RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE~~
11 ~~PREFERENCE SHALL BE APPLIED TO A RESPONSIVE BID UNDER SUBSECTION (A)(1)~~
12 ~~OF THIS SECTION IF THE RESPONSIBLE BIDDER AND EACH SUBCONTRACTOR~~
13 ~~CERTIFIES ON A FORM REQUIRED BY THE DEPARTMENT OF GENERAL SERVICES~~
14 ~~THAT THE AGGREGATE EMPLOYEE HEALTH CARE EXPENSES PAID BY THE BIDDER~~
15 ~~OR SUBCONTRACTOR WERE AT LEAST 10% OF THE AGGREGATE SOCIAL SECURITY~~
16 ~~WAGES PAID BY THE BIDDER OR SUBCONTRACTOR DURING:~~

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

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

24 (A) BY REGULATION, THE DEPARTMENT OF GENERAL SERVICES SHALL
25 ESTABLISH PROCEDURES FOR EACH BIDDER, CONTRACTOR, OR SUBCONTRACTOR
26 THAT PERFORMS WORK ON A STATE-FUNDED CONSTRUCTION PROJECT TO CERTIFY
27 THAT THE BIDDER, CONTRACTOR, OR SUBCONTRACTOR PAYS EMPLOYEE HEALTH
28 CARE EXPENSES IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

29 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
30 BIDDER, CONTRACTOR, OR SUBCONTRACTOR SHALL DEMONSTRATE THE PAYMENT
31 OF EMPLOYEE HEALTH CARE EXPENSES BY SUBMITTING CERTIFICATION OR A VALID
32 CONTRACT TO THE DEPARTMENT OF GENERAL SERVICES EVIDENCING THAT, WITH
33 RESPECT TO THE EMPLOYEES WHO WILL WORK ON OR AT THE SITE OF THE PROJECT:

34 (I) THE BIDDER, CONTRACTOR, OR SUBCONTRACTOR PAYS
35 AGGREGATE EMPLOYEE HEALTH CARE EXPENSES OF AT LEAST 5% OF THE

1 AGGREGATE SOCIAL SECURITY WAGES PAID BY THE BIDDER, CONTRACTOR, OR
 2 SUBCONTRACTOR; OR

3 (II) THE BIDDER, CONTRACTOR, OR SUBCONTRACTOR PAYS 50%
 4 OR MORE OF THE REQUIRED PREMIUM NECESSARY TO OBTAIN COVERAGE BY A
 5 CREDIBLE HEALTH CARE INSURANCE PLAN.

6 (2) BEFORE JULY 1, 2020, A BIDDER, CONTRACTOR, OR
 7 SUBCONTRACTOR MAY DEMONSTRATE PAYMENT OF EMPLOYEE HEALTH CARE
 8 EXPENSES BY SUBMITTING CERTIFICATION OR A VALID CONTRACT TO THE
 9 DEPARTMENT OF GENERAL SERVICES EVIDENCING, WITH RESPECT TO THE
 10 EMPLOYEES WHO WILL WORK ON OR AT THE SITE OF THE PROJECT, THAT:

11 (I) UNDER A CONTRACT WITH A CREDIBLE HEALTH CARE
 12 INSURANCE PLAN OR THROUGH A COLLECTIVE BARGAINING AGREEMENT, THE
 13 BIDDER, CONTRACTOR, OR SUBCONTRACTOR PAYS SOME PORTION OF EMPLOYEE
 14 HEALTH CARE EXPENSES; AND

15 (II) THE BIDDER, CONTRACTOR, OR SUBCONTRACTOR WILL
 16 MEET THE REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION ON RENEWAL
 17 OF THE CONTRACT OR COLLECTIVE BARGAINING AGREEMENT.

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

21 (D) A PROCUREMENT OFFICER MAY REQUIRE A RESPONSIBLE BIDDER OR
 22 SUBCONTRACTOR TO SUBMIT RECORDS TO THE PROCUREMENT OFFICER THAT ARE
 23 SUFFICIENT TO SUPPORT THE CERTIFICATION THAT THE BIDDER OR
 24 SUBCONTRACTOR SUBMITTED IN ACCORDANCE WITH SUBSECTION (B) OF THIS
 25 SECTION.

26 ~~(E) A RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE~~
 27 ~~PREFERENCE MAY NOT BE APPLIED TO A BID SUBMITTED BY A BIDDER OR~~
 28 ~~SUBCONTRACTOR THAT MEETS THE REQUIREMENTS UNDER SUBSECTION (A)(1) OF~~
 29 ~~THIS SECTION IF:~~

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

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

1 **(E) IF A RESPONSIBLE BIDDER THAT IS AWARDED A CONTRACT TO WORK ON**
2 **A STATE-FUNDED CONSTRUCTION PROJECT FAILS TO SUBMIT RECORDS REQUIRED**
3 **UNDER THIS SECTION WITHIN A REASONABLE PERIOD OF TIME, THE PROCUREMENT**
4 **OFFICER MAY VOID THE CONTRACT.**

5 ~~14-704.~~

6 ~~**(A) FOR AT LEAST 1 YEAR AFTER THE AWARD OF A CONTRACT FOR A**~~
7 ~~**RESPONSIVE BID TO WHICH A RESPONSIBLE WORKFORCE DEVELOPMENT**~~
8 ~~**PERCENTAGE PRICE PREFERENCE WAS APPLIED UNDER § 14-703(A)(1) OF THIS**~~
9 ~~**SUBTITLE, THE AGGREGATE EMPLOYEE HEALTH CARE EXPENSES PAID BY THE**~~
10 ~~**RESPONSIBLE BIDDER AWARDED THE CONTRACT AND EACH SUBCONTRACTOR**~~
11 ~~**SHALL BE AT LEAST 10% OF THE AGGREGATE SOCIAL SECURITY WAGES PAID BY THE**~~
12 ~~**BIDDER OR SUBCONTRACTOR.**~~

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

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

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

28 ~~14-705. 17-804.~~

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

31 **(B) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION SHALL BE**
32 **SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN \$2,500 AND NOT EXCEEDING**
33 **\$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 SECTION 2. AND BE IT FURTHER ENACTED, That:

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

10 (1) whether the bidding company and any subcontractor provides employee
11 health care coverage or family health care coverage on projects that require a prevailing
12 wage;

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

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

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

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

25 (c) On or before August 1, 2020, 2021, and 2022, the Board of Public Works shall
26 report the information collected under this section for the previous fiscal year to the Senate
27 Education, Health, and Environmental Affairs Committee and the House Health and
28 Government Operations Committee, in accordance with § 2-1246 of the State Government
29 Article.

30 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 July 1, 2019.