

# HOUSE BILL 819

P2, F2

(5lr1117)

## ENROLLED BILL

— Health and Government Operations/Budget and Taxation —

Introduced by Delegates Guzzone, Edelson, Embry, Hill, Kerr, R. Lewis, Shetty, White Holland, and Woods Woods, Alston, Bagnall, Bhandari, Chisholm, Cullison, Hutchinson, S. Johnson, Kaiser, Kipke, Lopez, Martinez, M. Morgan, Pena-Melnyk, Reilly, Rosenberg, Ross, Szeliga, Taveras, and Woorman

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement – Employee Stock Ownership Plan Preference – Pilot**

3 FOR the purpose of ~~establishing a preference program for certain procurements by~~  
4 authorizing the Maryland Stadium Authority, ~~the University System of Maryland,~~  
5 Morgan State University, St. Mary's College of Maryland, and Baltimore City  
6 Community College to establish a certain preference program for certain  
7 procurements; establishing authorizing the establishment of a certain price  
8 ~~preference~~ evaluation factor for certain bids and proposals by an entity that utilizes  
9 certain employee stock ownership plans; requiring contractors to provide certain  
10 information to a unit regarding the use of an employee stock ownership plan; and

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### 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.

*Italics indicate opposite chamber/conference committee amendments.*



1 generally relating to procurement preferences for entities that utilize an employee  
2 stock ownership plan.

3 BY repealing and reenacting, with amendments,  
4 Article – State Finance and Procurement  
5 Section 11–203(c)  
6 Annotated Code of Maryland  
7 (2021 Replacement Volume and 2024 Supplement)

8 BY repealing and reenacting, without amendments,  
9 Article – State Finance and Procurement  
10 Section 11–203(e)(1), (2), and (7)  
11 Annotated Code of Maryland  
12 (2021 Replacement Volume and 2024 Supplement)

13 BY repealing and reenacting, with amendments,  
14 Article – State Finance and Procurement  
15 Section 11–203(e)(5)  
16 Annotated Code of Maryland  
17 (2021 Replacement Volume and 2024 Supplement)  
18 (As enacted by Chapters 575 and 576 of the Acts of the General Assembly of 2023)

19 BY adding to  
20 Article – State Finance and Procurement  
21 Section 14–801 through 14–806 to be under the new subtitle “Subtitle 8. Employee  
22 Stock Ownership Plan Preference Program”  
23 Annotated Code of Maryland  
24 (2021 Replacement Volume and 2024 Supplement)

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

27 **Article – State Finance and Procurement**

28 11–203.

29 (c) Except as provided in Title 12, Subtitle 4 and Title 14, [Subtitle 3]  
30 **SUBTITLES 3 AND 8** of this article and except for §§ 15–112 and 15–113 of this article, this  
31 Division II does not apply to the Maryland Stadium Authority.

32 (e) (1) In this subsection, “University” means the University System of  
33 Maryland, Morgan State University, or St. Mary’s College of Maryland.

34 (2) Except as otherwise provided in this subsection, this Division II does  
35 not apply to the University System of Maryland, Morgan State University, St. Mary’s  
36 College of Maryland, or Baltimore City Community College.

1 (5) (i) Except as provided in paragraph (7) of this subsection, the  
 2 following provisions of Division II of this article apply to a University and to Baltimore City  
 3 Community College:

- 4 1. § 11–205 of this subtitle (“Collusion”);
- 5 2. § 11–205.1 of this subtitle (“Falsification, concealment,  
 6 etc., of material facts”);
- 7 3. § 13–219 of this article (“Required clauses –  
 8 Nondiscrimination clause”);
- 9 4. § 13–225 of this article (“Retainage”);
- 10 5. Title 14, Subtitle 3 of this article (“Minority Business  
 11 Participation”);
- 12 6. Title 14, Subtitle 7 of this article (“Certified Local Farm  
 13 and Fish Program”);
- 14 ~~7. TITLE 14, SUBTITLE 8 OF THIS ARTICLE (“EMPLOYEE  
 15 STOCK OWNERSHIP PLAN PREFERENCE PROGRAM”);~~
- 16 ~~7.} 8.~~ Title 15, Subtitle 1 of this article (“Procurement Contract  
 17 Administration”);
- 18 ~~8.} 9.~~ § 15–226 of this article (“Policy established; timing of  
 19 payments; notice upon nonpayment; disputes; appeals”); and
- 20 ~~9.} 10.~~ Title 16 of this article (“Suspension and Debarment  
 21 of Contractors”).

22 **(II) EXCEPT AS PROVIDED IN PARAGRAPH (7) OF THIS**  
 23 **SUBSECTION, TITLE 14, SUBTITLE 8 OF THIS ARTICLE (“EMPLOYEE STOCK**  
 24 **OWNERSHIP PLAN PREFERENCE PROGRAM”) APPLIES TO MORGAN STATE**  
 25 **UNIVERSITY, ST. MARY’S COLLEGE OF MARYLAND, AND BALTIMORE CITY**  
 26 **COMMUNITY COLLEGE.**

27 ~~(ii)~~ **(III)** If a procurement violates the provisions of this subsection  
 28 or policies adopted in accordance with this subsection, the procurement contract is void or  
 29 voidable in accordance with the provisions of § 11–204 of this subtitle.

30 (7) Except with regard to the provisions of § 15–113 of this article,  
 31 paragraphs (3), (4), and (5) of this subsection do not apply to:

- 1 (i) procurement by a University or Baltimore City Community  
 2 College from:
- 3 1. another unit;
- 4 2. a political subdivision of the State;
- 5 3. an agency of a political subdivision of the State;
- 6 4. a government, including the government of another state,  
 7 of the United States, or of another country;
- 8 5. an agency or political subdivision of a government; or
- 9 6. a bistate, multistate, bicounty, or multicounty  
 10 governmental agency;
- 11 (ii) procurement by a University in support of enterprise activities  
 12 for the purpose of:
- 13 1. direct resale;
- 14 2. remanufacture and subsequent resale; or
- 15 3. procurement by the University for overseas programs; or
- 16 (iii) procurement by the University System of Maryland for:
- 17 1. services of managers to invest, in accordance with the  
 18 management and investment policies adopted by the Board of Regents of the University  
 19 System of Maryland, gift and endowment assets received by the University System of  
 20 Maryland in accordance with § 12–104(e) of the Education Article; or
- 21 2. expenditures to manage, maintain, and enhance, in  
 22 accordance with the management and investment policies adopted by the Board of Regents  
 23 of the University System of Maryland, the value of gift and endowment assets received by  
 24 the University System of Maryland in accordance with § 12–104(e) of the Education Article.

25 **SUBTITLE 8. EMPLOYEE STOCK OWNERSHIP PLAN PREFERENCE PROGRAM.**

26 **14–801.**

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

1 (B) "COVERED PROCUREMENT" MEANS A PROCUREMENT THAT IS VALUED  
2 AT LESS THAN \$80,000,000.

3 ~~(C) "ESOP BIDDER" MEANS A RESPONSIBLE BIDDER WHO UTILIZES AN~~  
4 ~~EMPLOYEE STOCK OWNERSHIP PLAN APPROVED UNDER § 401(A) OF THE INTERNAL~~  
5 ~~REVENUE CODE. ESOP EVALUATION FACTOR" MEANS A PREFERENCE FOR AN~~  
6 ~~ESOP OFFEROR THAT A UNIT MAY INCLUDE IN THE EVALUATION OF PROPOSALS.~~

7 (D) "ESOP OFFEROR" MEANS A RESPONSIBLE OFFEROR WHO UTILIZES AN  
8 EMPLOYEE STOCK OWNERSHIP PLAN APPROVED UNDER § 401(A) OF THE INTERNAL  
9 REVENUE CODE.

10 ~~(E) "NON-ESOP BIDDER" MEANS A RESPONSIBLE BIDDER WHO DOES NOT~~  
11 ~~UTILIZE AN EMPLOYEE STOCK OWNERSHIP PLAN APPROVED UNDER § 401(A) OF THE~~  
12 ~~INTERNAL REVENUE CODE.~~

13 ~~(F) "NON-ESOP OFFEROR" MEANS A RESPONSIBLE OFFEROR WHO DOES~~  
14 ~~NOT UTILIZE AN EMPLOYEE STOCK OWNERSHIP PLAN APPROVED UNDER § 401(A) OF~~  
15 ~~THE INTERNAL REVENUE CODE.~~

16 ~~(G) "PERCENTAGE PREFERENCE" MEANS:~~

17 ~~(1) THE PERCENT OF THE LOWEST RESPONSIVE BID SUBMITTED BY A~~  
18 ~~NON-ESOP BIDDER BY WHICH A RESPONSIVE BID SUBMITTED BY AN ESOP BIDDER~~  
19 ~~MAY:~~

20 ~~(I) EXCEED THE LOWEST BID; AND~~

21 ~~(II) BE AWARDED A COVERED PROCUREMENT CONTRACT IN~~  
22 ~~ACCORDANCE WITH THIS SUBTITLE; OR~~

23 ~~(2) THE PERCENT OF THE LOWEST RESPONSIVE COST PROPOSAL~~  
24 ~~SUBMITTED BY A NON-ESOP OFFEROR BY WHICH A RESPONSIVE PROPOSAL~~  
25 ~~SUBMITTED BY AN ESOP OFFEROR MAY:~~

26 ~~(I) EXCEED THE LOWEST COST; AND~~

27 ~~(II) BE AWARDED A COVERED PROCUREMENT CONTRACT IN~~  
28 ~~ACCORDANCE WITH THIS SUBTITLE.~~

29 ~~(H)~~ (E) "UNIT" MEANS THE MARYLAND STADIUM AUTHORITY, A  
30 UNIVERSITY, OR THE BALTIMORE CITY COMMUNITY COLLEGE.

1           ~~(H)~~ *(F)*           “UNIVERSITY” MEANS ~~THE UNIVERSITY SYSTEM OF MARYLAND,~~  
2 MORGAN STATE UNIVERSITY, OR ST. MARY’S COLLEGE OF MARYLAND.

3 14-802.

4           THIS SUBTITLE APPLIES TO A COVERED PROCUREMENT OF:

5           (1)    THE MARYLAND STADIUM AUTHORITY;

6           (2)    A UNIVERSITY; OR

7           (3)    BALTIMORE CITY COMMUNITY COLLEGE.

8 14-803.

9           SUBJECT TO THE APPROVAL OF THE BOARD, EACH UNIT ~~SHALL~~ MAY  
10 ESTABLISH ~~A PERCENTAGE PREFERENCE~~ AN EVALUATION FACTOR, NOT TO EXCEED  
11 ~~5%~~ 10%.

12 14-804.

13           ~~(A)    A UNIT SHALL AWARD IF A UNIT AWARDS A COVERED PROCUREMENT~~  
14 ~~CONTRACT USING COMPETITIVE SEALED BIDS UNDER § 13 103 OF THIS ARTICLE,~~  
15 ~~THE UNIT MAY AWARD THE CONTRACT TO AN ESOP BIDDER IF THE ESOP BIDDER:~~

16           ~~(1)    SUBMITS THE LOWEST RESPONSIVE BID; OR~~

17           ~~(2)    DOES NOT SUBMIT THE LOWEST RESPONSIVE BID BUT THE~~  
18 ~~DIFFERENCE BETWEEN THE BID AND THE LOWEST RESPONSIVE BID SUBMITTED BY~~  
19 ~~A NON-ESOP BIDDER DOES NOT EXCEED THE PERCENTAGE PREFERENCE~~  
20 ~~ESTABLISHED UNDER § 14 803 OF THIS SUBTITLE.~~

21           ~~(B)    A UNIT SHALL AWARD IF A UNIT AWARDS A COVERED PROCUREMENT~~  
22 ~~CONTRACT USING COMPETITIVE SEALED PROPOSALS UNDER § 13 104 OF THIS~~  
23 ~~ARTICLE, THE UNIT MAY AWARD THE CONTRACT TO AN ESOP OFFEROR IF THE~~  
24 ~~ESOP OFFEROR:~~

25           ~~(1)    SUBMITS THE RESPONSIVE PROPOSAL THAT IS MOST~~  
26 ~~ADVANTAGEOUS TO THE UNIT AFTER FACTORING IN THE PRICE PREFERENCE; OR~~

27           ~~(2)    DOES NOT SUBMIT THE RESPONSIVE PROPOSAL THAT IS MOST~~  
28 ~~ADVANTAGEOUS TO THE UNIT BUT THE DIFFERENCE BETWEEN THAT PROPOSAL AND~~  
29 ~~THE LOWEST RESPONSIVE PROPOSAL SUBMITTED BY A NON-ESOP OFFEROR DOES~~

1 ~~NOT EXCEED THE PERCENTAGE PREFERENCE ESTABLISHED UNDER § 14-803 OF~~  
2 ~~THIS SUBTITLE.~~

3 (A) A UNIT MAY INCLUDE AN ESOP EVALUATION FACTOR IN THE  
4 TECHNICAL EVALUATION FOR A COMPETITIVE SEALED PROPOSAL UNDER § 13-104  
5 OF THIS ARTICLE FOR A CONTRACT SUBJECT TO THIS SUBTITLE.

6 (B) AN ESOP EVALUATION FACTOR MAY BE:

7 (1) IF A POINT SYSTEM IS USED FOR EVALUATION OF PROPOSALS, UP  
8 TO THE PERCENTAGE OF THE TOTAL ALLOCABLE TECHNICAL POINTS AUTHORIZED  
9 UNDER § 14-803 OF THIS SUBTITLE; OR

10 (2) IF A POINT SYSTEM IS NOT USED FOR EVALUATION OF PROPOSALS,  
11 RANKED IN ITS RELATIVE ORDER OF IMPORTANCE.

12 14-805.

13 (A) A CONTRACTOR THAT IS AWARDED A CONTRACT FOR A COVERED  
14 PROCUREMENT SHALL PROVIDE TO A UNIT, AS A CONDITION OF RECEIVING THE  
15 CONTRACT, WRITTEN VERIFICATION OF THE IRS DETERMINATION LETTER FOR THE  
16 CONTRACTOR'S EMPLOYEE STOCK OWNERSHIP PLAN.

17 (B) THE WRITTEN VERIFICATION REQUIRED UNDER SUBSECTION (A) OF  
18 THIS SECTION SHALL BE PROVIDED BY A CONTRACTOR TO THE UNIT RESPONSIBLE  
19 FOR THE PROJECT WITH THE SUBMISSION OF A ~~BID OR~~ PROPOSAL.

20 14-806.

21 ON OR BEFORE DECEMBER 1, 2028, THE MARYLAND STADIUM AUTHORITY,  
22 BALTIMORE CITY COMMUNITY COLLEGE, ~~THE UNIVERSITY SYSTEM OF MARYLAND,~~  
23 MORGAN STATE UNIVERSITY, AND ST. MARY'S COLLEGE OF MARYLAND SHALL  
24 SUBMIT A REPORT, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT  
25 ARTICLE, TO THE LEGISLATIVE POLICY COMMITTEE, THE SENATE BUDGET AND  
26 TAXATION COMMITTEE, AND THE HOUSE HEALTH AND GOVERNMENT OPERATIONS  
27 COMMITTEE, ON:

28 (1) THE NUMBER AND DOLLAR VALUE OF CONTRACTS AWARDED IN  
29 ACCORDANCE WITH THIS SUBTITLE TO ~~ESOP BIDDERS AND~~ ESOP OFFERORS  
30 DURING FISCAL YEARS 2026, 2027, AND 2028; AND

31 ~~(2) THE AMOUNT OF PRICE PREFERENCE APPLIED TO ALL~~  
32 ~~CONTRACTS AWARDED IN ACCORDANCE WITH THIS SUBTITLE; AND~~

1                    ~~(3)~~ AN EVALUATION OF THE EFFECTIVENESS OF THE EMPLOYEE  
2 STOCK OWNERSHIP PLAN PREFERENCE PROGRAM.

3                    SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to  
4 procurement contracts solicited on or before June 30, 2030.

5                    SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
6 1, 2025. It shall remain effective for a period of 5 years and, at the end of June 30, 2030,  
7 this Act, with no further action required by the General Assembly, shall be abrogated and  
8 of no further force and effect.

Approved:

\_\_\_\_\_  
Governor.

\_\_\_\_\_  
Speaker of the House of Delegates.

\_\_\_\_\_  
President of the Senate.