

SENATE BILL 653

P2, F2

5lr2348
CF HB 819

By: **Senator McCray**

Introduced and read first time: January 25, 2025

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 10, 2025

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
11 generally relating to procurement preferences for entities that utilize an employee
12 stock ownership plan.

13 BY repealing and reenacting, with amendments,
14 Article – State Finance and Procurement
15 Section 11–203(c)
16 Annotated Code of Maryland
17 (2021 Replacement Volume and 2024 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – State Finance and Procurement
20 Section 11–203(e)(1), (2), and (7)
21 Annotated Code of Maryland
22 (2021 Replacement Volume and 2024 Supplement)

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.



1 BY repealing and reenacting, with amendments,
 2 Article – State Finance and Procurement
 3 Section 11–203(e)(5)
 4 Annotated Code of Maryland
 5 (2021 Replacement Volume and 2024 Supplement)
 6 (As enacted by Chapters 575 and 576 of the Acts of the General Assembly of 2023)

7 BY adding to
 8 Article – State Finance and Procurement
 9 Section 14–801 through 14–806 to be under the new subtitle “Subtitle 8. Employee
 10 Stock Ownership Plan Preference Program”
 11 Annotated Code of Maryland
 12 (2021 Replacement Volume and 2024 Supplement)

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

15 **Article – State Finance and Procurement**

16 11–203.

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

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

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

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

- 28 1. § 11–205 of this subtitle (“Collusion”);
- 29 2. § 11–205.1 of this subtitle (“Falsification, concealment,
 30 etc., of material facts”);
- 31 3. § 13–219 of this article (“Required
 32 clauses – Nondiscrimination clause”);
- 33 4. § 13–225 of this article (“Retainage”);

1 5. Title 14, Subtitle 3 of this article (“Minority Business
2 Participation”);

3 6. Title 14, Subtitle 7 of this article (“Certified Local Farm
4 and Fish Program”);

5 ~~7. TITLE 14, SUBTITLE 8 OF THIS ARTICLE (“EMPLOYEE
6 STOCK OWNERSHIP PLAN PREFERENCE PROGRAM”);~~

7 ~~7.] 8.~~ Title 15, Subtitle 1 of this article (“Procurement Contract
8 Administration”);

9 ~~8.] 9.~~ § 15–226 of this article (“Policy established; timing of
10 payments; notice upon nonpayment; disputes; appeals”); and

11 ~~9.] 10.~~ Title 16 of this article (“Suspension and Debarment
12 of Contractors”).

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

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

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

23 (i) procurement by a University or Baltimore City Community
24 College from:

25 1. another unit;

26 2. a political subdivision of the State;

27 3. an agency of a political subdivision of the State;

28 4. a government, including the government of another state,
29 of the United States, or of another country;

30 5. an agency or political subdivision of a government; or

1 6. a bistate, multistate, bicounty, or multicounty
2 governmental agency;

3 (ii) procurement by a University in support of enterprise activities
4 for the purpose of:

- 5 1. direct resale;
- 6 2. remanufacture and subsequent resale; or
- 7 3. procurement by the University for overseas programs; or

8 (iii) procurement by the University System of Maryland for:

9 1. services of managers to invest, in accordance with the
10 management and investment policies adopted by the Board of Regents of the University
11 System of Maryland, gift and endowment assets received by the University System of
12 Maryland in accordance with § 12-104(e) of the Education Article; or

13 2. expenditures to manage, maintain, and enhance, in
14 accordance with the management and investment policies adopted by the Board of Regents
15 of the University System of Maryland, the value of gift and endowment assets received by
16 the University System of Maryland in accordance with § 12-104(e) of the Education Article.

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

18 14-801.

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

21 (B) “COVERED PROCUREMENT” MEANS A PROCUREMENT THAT IS VALUED
22 AT LESS THAN \$80,000,000.

23 (C) “ESOP BIDDER” MEANS A RESPONSIBLE BIDDER WHO UTILIZES AN
24 EMPLOYEE STOCK OWNERSHIP PLAN APPROVED UNDER § 401(A) OF THE INTERNAL
25 REVENUE CODE.

26 (D) “ESOP EVALUATION FACTOR” MEANS A PREFERENCE FOR AN ESOP
27 BIDDER OR ESOP OFFEROR THAT A UNIT MAY INCLUDE IN THE VALUATION OF
28 PROPOSALS.

29 ~~(D)~~ (E) “ESOP OFFEROR” MEANS A RESPONSIBLE OFFEROR WHO
30 UTILIZES AN EMPLOYEE STOCK OWNERSHIP PLAN APPROVED UNDER § 401(A) OF
31 THE INTERNAL REVENUE CODE.

1 ~~(E)~~ **(F)** “NON-ESOP BIDDER” MEANS A RESPONSIBLE BIDDER WHO DOES
2 NOT UTILIZE AN EMPLOYEE STOCK OWNERSHIP PLAN APPROVED UNDER § 401(A) OF
3 THE INTERNAL REVENUE CODE.

4 ~~(F)~~ **(G)** “NON-ESOP OFFEROR” MEANS A RESPONSIBLE OFFEROR WHO
5 DOES NOT UTILIZE AN EMPLOYEE STOCK OWNERSHIP PLAN APPROVED UNDER §
6 401(A) OF THE INTERNAL REVENUE CODE.

7 ~~(G)~~ ~~“PERCENTAGE PREFERENCE” MEANS:~~

8 ~~(1) THE PERCENT OF THE LOWEST RESPONSIVE BID SUBMITTED BY A~~
9 ~~NON-ESOP BIDDER BY WHICH A RESPONSIVE BID SUBMITTED BY AN ESOP BIDDER~~
10 ~~MAY:~~

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

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

14 ~~(2) THE PERCENT OF THE LOWEST RESPONSIVE COST PROPOSAL~~
15 ~~SUBMITTED BY A NON-ESOP OFFEROR BY WHICH A RESPONSIVE PROPOSAL~~
16 ~~SUBMITTED BY AN ESOP OFFEROR MAY:~~

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

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

20 **(H)** “UNIT” MEANS THE MARYLAND STADIUM AUTHORITY, A UNIVERSITY,
21 OR THE BALTIMORE CITY COMMUNITY COLLEGE.

22 **(I)** “UNIVERSITY” MEANS ~~THE UNIVERSITY SYSTEM OF MARYLAND,~~
23 ~~MORGAN STATE UNIVERSITY,~~ OR ST. MARY’S COLLEGE OF MARYLAND.

24 14-802.

25 THIS SUBTITLE APPLIES TO A COVERED PROCUREMENT OF:

26 **(1)** THE MARYLAND STADIUM AUTHORITY;

27 **(2)** A UNIVERSITY; OR

28 **(3)** BALTIMORE CITY COMMUNITY COLLEGE.

29 14-803.

1 SUBJECT TO THE APPROVAL OF THE BOARD, EACH UNIT ~~SHALL~~ MAY
2 ~~ESTABLISH A PERCENTAGE PREFERENCE~~ AN EVALUATION FACTOR, NOT TO EXCEED
3 ~~5%~~ 10%.

4 14-804.

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

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

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

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

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

19 ~~(2) DOES NOT SUBMIT THE RESPONSIVE PROPOSAL THAT IS MOST~~
20 ~~ADVANTAGEOUS TO THE UNIT BUT THE DIFFERENCE BETWEEN THAT PROPOSAL AND~~
21 ~~THE LOWEST RESPONSIVE PROPOSAL SUBMITTED BY A NON-ESOP OFFEROR DOES~~
22 ~~NOT EXCEED THE PERCENTAGE PREFERENCE ESTABLISHED UNDER § 14-803 OF~~
23 ~~THIS SUBTITLE.~~

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

27 (B) AN ESOP EVALUATION FACTOR MAY BE:

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

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

1 14-805.

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

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

9 14-806.

10 ON OR BEFORE DECEMBER 1, 2028, THE MARYLAND STADIUM AUTHORITY,
11 BALTIMORE CITY COMMUNITY COLLEGE, ~~THE UNIVERSITY SYSTEM OF MARYLAND,~~
12 MORGAN STATE UNIVERSITY, AND ST. MARY'S COLLEGE OF MARYLAND SHALL
13 SUBMIT A REPORT, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT
14 ARTICLE, TO THE LEGISLATIVE POLICY COMMITTEE, THE SENATE BUDGET AND
15 TAXATION COMMITTEE, AND THE HOUSE HEALTH AND GOVERNMENT OPERATIONS
16 COMMITTEE, ON:

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

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

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

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

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
27 1, 2025. It shall remain effective for a period of 5 years and, at the end of June 30, 2030,
28 this Act, with no further action required by the General Assembly, shall be abrogated and
29 of no further force and effect.