

# HOUSE BILL 680

P2

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CF SB 433

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By: **Delegates Cullison, Barron, Bromwell, Carey, Carr, Charkoudian, Glenn, Johnson, Kelly, Lafferty, R. Lewis, Pena–Melnik, Reznik, Sample–Hughes, and P. Young**

Introduced and read first time: February 7, 2019

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Responsible Workforce Development Percentage Price Preference Act**

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

26 BY adding to

27 Article – State Finance and Procurement

28 Section 14–701 through 14–705 to be under the new subtitle “Subtitle 7. Responsible

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Workforce Development Percentage Price Preference”  
2 Annotated Code of Maryland  
3 (2015 Replacement Volume and 2018 Supplement)

4 Preamble

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

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

12 **Article – State Finance and Procurement**

13 **SUBTITLE 7. RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE**  
14 **PREFERENCE.**

15 **14-701.**

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

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

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

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

27 (D) “EMPLOYEE” MEANS AN INDIVIDUAL WHO IS EMPLOYED TO WORK IN  
28 THE STATE BY A RESPONSIBLE BIDDER OR SUBCONTRACTOR.

29 (E) (1) “EMPLOYEE HEALTH CARE EXPENSES” MEANS ANY COSTS FOR  
30 HEALTH CARE SERVICES THAT ARE PAID BY A RESPONSIBLE BIDDER OR  
31 SUBCONTRACTOR TO AN EMPLOYEE.

32 (2) “EMPLOYEE HEALTH CARE EXPENSES” INCLUDES:

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

6 (II) REIMBURSEMENTS TO AN EMPLOYEE FOR EXPENSES  
7 INCURRED IN THE PURCHASE OF HEALTH CARE SERVICES;

8 (III) PAYMENTS TO A THIRD PARTY FOR THE PURPOSE OF  
9 PROVIDING HEALTH CARE SERVICES FOR AN EMPLOYEE;

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

12 (V) COSTS INCURRED IN THE DIRECT DELIVERY OF HEALTH  
13 CARE SERVICES TO AN EMPLOYEE.

14 (F) "HEALTH CARE SERVICES" MEANS MEDICAL CARE, SERVICES, OR  
15 GOODS THAT:

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

18 (2) HAVE A SUBSTANTIALLY EQUIVALENT PURPOSE TO MEDICAL  
19 CARE, SERVICES, OR GOODS THAT QUALIFY AS A TAX DEDUCTIBLE EXPENSE UNDER  
20 § 213 OF THE INTERNAL REVENUE CODE.

21 (G) "RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE  
22 PREFERENCE" MEANS THE PERCENT BY WHICH A RESPONSIVE BID SUBMITTED BY A  
23 RESPONSIBLE BIDDER THAT MEETS THE REQUIREMENTS UNDER § 14-703(A) OF  
24 THIS SUBTITLE MAY EXCEED THE LOWEST RESPONSIVE BID SUBMITTED BY A  
25 RESPONSIVE BIDDER THAT DOES NOT MEET THE REQUIREMENTS UNDER §  
26 14-703(A) OF THIS SUBTITLE.

27 (H) "SUBCONTRACTOR" MEANS A PERSON LISTED ON A RESPONSIVE BID TO  
28 PROVIDE GOODS OR SERVICES UNDER A PORTION OF A CONTRACT WITH THE STATE.  
29 14-702.

30 THE BOARD SHALL ADOPT REGULATIONS THAT REQUIRE EACH UNIT TO  
31 ESTABLISH A RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE

1 PREFERENCE OF AT LEAST 4%.

2 14-703.

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

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

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

11 (B) A RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE  
12 PREFERENCE SHALL BE APPLIED TO A RESPONSIVE BID UNDER SUBSECTION (A)(1)  
13 OF THIS SECTION IF THE RESPONSIBLE BIDDER AND EACH SUBCONTRACTOR  
14 CERTIFIES ON A FORM REQUIRED BY THE DEPARTMENT OF GENERAL SERVICES  
15 THAT THE AGGREGATE EMPLOYEE HEALTH CARE EXPENSES PAID BY THE BIDDER  
16 OR SUBCONTRACTOR WERE AT LEAST 10% 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 SUBCONTRACTOR DID NOT HAVE AN EMPLOYEE  
21 IN THE STATE FOR THE ENTIRE 12-MONTH PERIOD IMMEDIATELY BEFORE  
22 SUBMISSION OF THE BID, FOR THE PERIOD OF TIME BETWEEN 3 MONTHS AND 12  
23 MONTHS IMMEDIATELY BEFORE SUBMISSION OF THE BID IN WHICH THE BIDDER OR  
24 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

1 PREFERENCE MAY NOT BE APPLIED TO A BID SUBMITTED BY A BIDDER OR  
2 SUBCONTRACTOR THAT MEETS THE REQUIREMENTS UNDER SUBSECTION (A)(1) OF  
3 THIS SECTION IF:

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

7 (2) A BIDDER OR SUBCONTRACTOR HAS NOT EMPLOYED AN  
8 INDIVIDUAL IN THE STATE FOR AT LEAST 3 MONTHS IMMEDIATELY BEFORE THE  
9 SUBMISSION OF THE BID.

10 14-704.

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

18 (B) A PROCUREMENT OFFICER MAY REQUIRE THE RESPONSIBLE BIDDER  
19 AWARDED A CONTRACT OR SUBCONTRACTOR TO SUBMIT RECORDS TO THE  
20 PROCUREMENT OFFICER THAT ARE SUFFICIENT TO SHOW COMPLIANCE WITH  
21 SUBSECTION (A) OF THIS SECTION.

22 (C) (1) IF THE RESPONSIBLE BIDDER AWARDED A CONTRACT OR  
23 SUBCONTRACTOR FAILS TO SUBMIT THE RECORDS REQUIRED UNDER SUBSECTION  
24 (B) OF THIS SECTION WITHIN A REASONABLE PERIOD OF TIME, THE PROCUREMENT  
25 OFFICER MAY VOID THE CONTRACT.

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

33 14-705.

34 (A) A PERSON OR AN ENTITY MAY NOT PROVIDE FALSE INFORMATION

1 UNDER THIS SUBTITLE.

2 (B) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION SHALL BE  
3 SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN \$2,500 AND NOT EXCEEDING  
4 \$25,000 FOR EACH VIOLATION.

5 (C) AN ACTION FOR A CIVIL PENALTY UNDER THIS SECTION MAY BE  
6 BROUGHT BY:

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

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

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

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
11 1, 2019.