

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5719
OFFERED BY MR. BRADY OF TEXAS**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Empowering Employ-
3 ees through Stock Ownership Act”.

4 SEC. 2. TREATMENT OF QUALIFIED EQUITY GRANTS.

5 (a) IN GENERAL.—

6 (1) ELECTION TO DEFER INCOME.—Section 83
7 of the Internal Revenue Code of 1986 is amended by
8 adding at the end the following new subsection:

9 “(i) QUALIFIED EQUITY GRANTS.—

10 “(1) IN GENERAL.—For purposes of this sub-
11 title, if qualified stock is transferred to a qualified
12 employee who makes an election with respect to such
13 stock under this subsection—

14 “(A) except as provided in subparagraph
15 (B), no amount shall be included in income
16 under subsection (a) for the first taxable year
17 in which the rights of the employee in such
18 stock are transferable or are not subject to a

1 substantial risk of forfeiture, whichever is appli-
2 cable, and

3 “(B) an amount equal to the amount
4 which would be included in income of the em-
5 ployee under subsection (a) (determined without
6 regard to this subsection) shall be included in
7 income for the taxable year of the employee
8 which includes the earliest of—

9 “(i) the first date such qualified stock
10 becomes transferable (including transfer-
11 able to the employer),

12 “(ii) the date the employee first be-
13 comes an excluded employee,

14 “(iii) the first date on which any stock
15 of the corporation which issued the quali-
16 fied stock becomes readily tradable on an
17 established securities market (as deter-
18 mined by the Secretary, but not including
19 any market unless such market is recog-
20 nized as an established securities market
21 by the Secretary for purposes of a provi-
22 sion of this title other than this sub-
23 section),

24 “(iv) the date that is 7 years after the
25 first date the rights of the employee in

1 such stock are transferable or are not sub-
2 ject to a substantial risk of forfeiture,
3 whichever occurs earlier, or

4 “(v) the date on which the employee
5 revokes (at such time and in such manner
6 as the Secretary may provide) the election
7 under this subsection with respect to such
8 stock.

9 “(2) QUALIFIED STOCK.—

10 “(A) IN GENERAL.—For purposes of this
11 subsection, the term ‘qualified stock’ means,
12 with respect to any qualified employee, any
13 stock in a corporation which is the employer of
14 such employee, if—

15 “(i) such stock is received—

16 “(I) in connection with the exer-
17 cise of an option, or

18 “(II) in settlement of a restricted
19 stock unit, and

20 “(ii) such option or restricted stock
21 unit was provided by the corporation—

22 “(I) in connection with the per-
23 formance of services as an employee,
24 and

1 “(II) during a calendar year in
2 which such corporation was an eligible
3 corporation.

4 “(B) LIMITATION.—The term ‘qualified
5 stock’ shall not include any stock if the em-
6 ployee may sell such stock to, or otherwise re-
7 ceive cash in lieu of stock from, the corporation
8 at the time that the rights of the employee in
9 such stock first become transferable or not sub-
10 ject to a substantial risk of forfeiture.

11 “(C) ELIGIBLE CORPORATION.—For pur-
12 poses of subparagraph (A)(ii)(II)—

13 “(i) IN GENERAL.—The term ‘eligible
14 corporation’ means, with respect to any
15 calendar year, any corporation if—

16 “(I) no stock of such corporation
17 (or any predecessor of such corpora-
18 tion) is readily tradable on an estab-
19 lished securities market (as deter-
20 mined under paragraph (1)(B)(iii))
21 during any preceding calendar year,
22 and

23 “(II) such corporation has a writ-
24 ten plan under which, in such cal-
25 endar year, not less than 80 percent

1 of all employees who provide services
2 to such corporation in the United
3 States (or any possession of the
4 United States) are granted stock op-
5 tions, or restricted stock units, with
6 the same rights and privileges to re-
7 ceive qualified stock.

8 “(ii) SAME RIGHTS AND PRIVI-
9 LEGES.—For purposes of clause (i)(II)—

10 “(I) except as provided in sub-
11 clauses (II) and (III), the determina-
12 tion of rights and privileges with re-
13 spect to stock shall be determined in
14 a similar manner as provided under
15 section 423(b)(5),

16 “(II) employees shall not fail to
17 be treated as having the same rights
18 and privileges to receive qualified
19 stock solely because the number of
20 shares available to all employees is not
21 equal in amount, so long as the num-
22 ber of shares available to each em-
23 ployee is more than a de minimis
24 amount, and

1 “(III) rights and privileges with
2 respect to the exercise of an option
3 shall not be treated as the same as
4 rights and privileges with respect to
5 the settlement of a restricted stock
6 unit.

7 “(iii) EMPLOYEE.—For purposes of
8 clause (i)(II), the term ‘employee’ shall not
9 include any employee described in section
10 4980E(d)(4) or any excluded employee.

11 “(iv) SPECIAL RULE FOR CALENDAR
12 YEARS BEFORE 2017.—In the case of any
13 calendar year beginning before January 1,
14 2017, clause (i)(II) shall be applied with-
15 out regard to whether the rights and privi-
16 leges with respect to the qualified stock are
17 the same.

18 “(3) QUALIFIED EMPLOYEE; EXCLUDED EM-
19 PLOYEE.—For purposes of this subsection—

20 “(A) IN GENERAL.—The term ‘qualified
21 employee’ means any individual who—

22 “(i) is not an excluded employee, and

23 “(ii) agrees in the election made
24 under this subsection to meet such require-
25 ments as determined by the Secretary to

1 be necessary to ensure that the with-
2 holding requirements of the corporation
3 under chapter 24 with respect to the quali-
4 fied stock are met.

5 “(B) EXCLUDED EMPLOYEE.—The term
6 ‘excluded employee’ means, with respect to any
7 corporation, any individual—

8 “(i) who was a 1-percent owner (with-
9 in the meaning of section 416(i)(1)(B)(ii))
10 at any time during the 10 preceding cal-
11 endar years,

12 “(ii) who is or has been at any prior
13 time—

14 “(I) the chief executive officer of
15 such corporation or an individual act-
16 ing in such a capacity, or

17 “(II) the chief financial officer of
18 such corporation or an individual act-
19 ing in such a capacity,

20 “(iii) who bears a relationship de-
21 scribed in section 318(a)(1) to any indi-
22 vidual described in subclause (I) or (II) of
23 clause (ii), or

24 “(iv) who has been for any of the 10
25 preceding taxable years one of the 4 high-

1 est compensated officers of such corpora-
2 tion determined with respect to each such
3 taxable year on the basis of the share-
4 holder disclosure rules for compensation
5 under the Securities Exchange Act of 1934
6 (as if such rules applied to such corpora-
7 tion).

8 “(4) ELECTION.—

9 “(A) TIME FOR MAKING ELECTION.—An
10 election with respect to qualified stock shall be
11 made under this subsection no later than 30
12 days after the first time the rights of the em-
13 ployee in such stock are transferable or are not
14 subject to a substantial risk of forfeiture,
15 whichever occurs earlier, and shall be made in
16 a manner similar to the manner in which an
17 election is made under subsection (b).

18 “(B) LIMITATIONS.—No election may be
19 made under this section with respect to any
20 qualified stock if—

21 “(i) the qualified employee has made
22 an election under subsection (b) with re-
23 spect to such qualified stock,

24 “(ii) any stock of the corporation
25 which issued the qualified stock is readily

1 tradable on an established securities mar-
2 ket (as determined under paragraph
3 (1)(B)(iii)) at any time before the election
4 is made, or

5 “(iii) such corporation purchased any
6 of its outstanding stock in the calendar
7 year preceding the calendar year which in-
8 cludes the first time the rights of the em-
9 ployee in such stock are transferable or are
10 not subject to a substantial risk of for-
11 feiture, unless—

12 “(I) not less than 25 percent of
13 the total dollar amount of the stock so
14 purchased is deferral stock, and

15 “(II) the determination of which
16 individuals from whom deferral stock
17 is purchased is made on a reasonable
18 basis.

19 “(C) DEFINITIONS AND SPECIAL RULES
20 RELATED TO LIMITATION ON STOCK REDEMP-
21 TIONS.—

22 “(i) DEFERRAL STOCK.—For pur-
23 poses of this paragraph, the term ‘deferral
24 stock’ means stock with respect to which

1 an election is in effect under this sub-
2 section

3 “(ii) DEFERRAL STOCK WITH RE-
4 SPECT TO ANY INDIVIDUAL NOT TAKEN
5 INTO ACCOUNT IF INDIVIDUAL HOLDS DE-
6 FERRAL STOCK WITH LONGER DEFERRAL
7 PERIOD.—Stock purchased by a corpora-
8 tion from any individual shall not be treat-
9 ed as deferral stock for purposes of clause
10 (iii) if such individual (immediately after
11 such purchase) holds any deferral stock
12 with respect to which an election has been
13 in effect under this subsection for a longer
14 period than the election with respect to the
15 stock so purchased.

16 “(iii) PURCHASE OF ALL OUT-
17 STANDING DEFERRAL STOCK.—The re-
18 quirements of subclauses (I) and (II) of
19 subparagraph (B)(iii) shall be treated as
20 met if the stock so purchased includes all
21 of the corporation’s outstanding deferral
22 stock.

23 “(iv) REPORTING.—Any corporation
24 which has outstanding deferral stock as of
25 the beginning of any calendar year and

1 which purchases any of its outstanding
2 stock during such calendar year shall in-
3 clude on its return of tax for the taxable
4 year in which, or with which, such calendar
5 year ends the total dollar amount of its
6 outstanding stock so purchased during
7 such calendar year and such other infor-
8 mation as the Secretary may require for
9 purposes of administering this paragraph.

10 “(5) CONTROLLED GROUPS.—For purposes of
11 this subsection, all corporations which are members
12 of the same controlled group of corporations (as de-
13 fined in section 1563(a)) shall be treated as one cor-
14 poration.

15 “(6) NOTICE REQUIREMENT.—Any corporation
16 that transfers qualified stock to a qualified employee
17 shall, at the time that (or a reasonable period be-
18 fore) an amount attributable to such stock would
19 (but for this subsection) first be includible in the
20 gross income of such employee—

21 “(A) certify to such employee that such
22 stock is qualified stock, and

23 “(B) notify such employee—

1 “(i) that the employee may elect to
2 defer income on such stock under this sub-
3 section, and

4 “(ii) that, if the employee makes such
5 an election—

6 “(I) the amount of income recog-
7 nized at the end of the deferral period
8 will be based on the value of the stock
9 at the time at which the rights of the
10 employee in such stock first become
11 transferable or not subject to substan-
12 tial risk of forfeiture, notwithstanding
13 whether the value of the stock has de-
14 clined during the deferral period,

15 “(II) the amount of such income
16 recognized at the end of the deferral
17 period will be subject to withholding
18 under section 3401(i) at the rate de-
19 termined under section 3402(t), and

20 “(III) the responsibilities of the
21 employee (as determined by the Sec-
22 retary under paragraph (3)(A)(ii))
23 with respect to such withholding.”.

24 (2) DEDUCTION BY EMPLOYER.—Subsection (h)
25 of section 83 of the Internal Revenue Code of 1986

1 is amended by striking “or (d)(2)” and inserting
2 “(d)(2), or (i)”.

3 (b) WITHHOLDING.—

4 (1) TIME OF WITHHOLDING.—Section 3401 of
5 the Internal Revenue Code of 1986 is amended by
6 adding at the end the following new subsection:

7 “(i) QUALIFIED STOCK FOR WHICH AN ELECTION IS
8 IN EFFECT UNDER SECTION 83(i).—For purposes of sub-
9 section (a), qualified stock (as defined in section 83(i))
10 with respect to which an election is made under section
11 83(i) shall be treated as wages—

12 “(1) received on the earliest date described in
13 section 83(i)(1)(B), and

14 “(2) in an amount equal to the amount in-
15 cluded in income under section 83 for the taxable
16 year which includes such date.”.

17 (2) AMOUNT OF WITHHOLDING.—Section 3402
18 of such Code is amended by adding at the end the
19 following new subsection:

20 “(t) RATE OF WITHHOLDING FOR CERTAIN
21 STOCK.—In the case of any qualified stock (as defined in
22 section 83(i)) with respect to which an election is made
23 under section 83(i)—

1 “(1) the rate of tax under subsection (a) shall
2 not be less than the maximum rate of tax in effect
3 under section 1, and

4 “(2) such stock shall be treated for purposes of
5 section 3501(b) in the same manner as a non-cash
6 fringe benefit.”.

7 (c) COORDINATION WITH OTHER DEFERRED COM-
8 PENSATION RULES.—

9 (1) ELECTION TO APPLY DEFERRAL TO STATU-
10 TORY OPTIONS.—

11 (A) INCENTIVE STOCK OPTIONS.—Section
12 422(b) of the Internal Revenue Code of 1986 is
13 amended by adding at the end the following:
14 “Such term shall not include any option if an
15 election is made under section 83(i) with re-
16 spect to the stock received in connection with
17 the exercise of such option.”.

18 (B) EMPLOYEE STOCK PURCHASE
19 PLANS.—Section 423(a) of such Code is amend-
20 ed by adding at the end the following flush sen-
21 tence:

22 “The preceding sentence shall not apply to any share of
23 stock with respect to which an election is made under sec-
24 tion 83(i).”.

1 (2) EXCLUSION FROM DEFINITION OF NON-
2 QUALIFIED DEFERRED COMPENSATION PLAN.—Sub-
3 section (d) of section 409A of the Internal Revenue
4 Code of 1986 is amended by adding at the end the
5 following new paragraph:

6 “(7) TREATMENT OF QUALIFIED STOCK.—An
7 arrangement under which an employee may receive
8 qualified stock (as defined in section 83(i)(2)) shall
9 not be treated as a nonqualified deferred compensa-
10 tion plan solely because of an employee’s ability to
11 defer recognition of income pursuant to an election
12 under section 83(i).”.

13 (d) INFORMATION REPORTING.—Section 6051(a) of
14 the Internal Revenue Code of 1986 is amended by striking
15 “and” at the end of paragraph (13), by striking the period
16 at the end of paragraph (14) and inserting a comma, and
17 by inserting after paragraph (14) the following new para-
18 graphs:

19 “(15) the amount excludable from gross income
20 under subparagraph (A) of section 83(i)(1),

21 “(16) the amount includible in gross income
22 under subparagraph (B) of section 83(i)(1) with re-
23 spect to an event described in such subparagraph
24 which occurs in such calendar year, and

1 “(17) the aggregate amount of income which is
2 being deferred pursuant to elections under section
3 83(i), determined as of the close of the calendar
4 year.”.

5 (e) PENALTY FOR FAILURE OF EMPLOYER TO PRO-
6 VIDE NOTICE OF TAX CONSEQUENCES.—Section 6652 of
7 the Internal Revenue Code of 1986 is amended by adding
8 at the end the following new subsection:

9 “(o) FAILURE TO PROVIDE NOTICE UNDER SECTION
10 83(i).—In the case of each failure to provide a notice as
11 required by section 83(i)(6), at the time prescribed there-
12 for, unless it is shown that such failure is due to reason-
13 able cause and not to willful neglect, there shall be paid,
14 on notice and demand of the Secretary and in the same
15 manner as tax, by the person failing to provide such no-
16 tice, an amount equal to \$100 for each such failure, but
17 the total amount imposed on such person for all such fail-
18 ures during any calendar year shall not exceed \$50,000.”.

19 (f) EFFECTIVE DATES.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), the amendments made by this section
22 shall apply to stock attributable to options exercised,
23 or restricted stock units settled, after December 31,
24 2016.

1 (2) REQUIREMENT TO PROVIDE NOTICE.—The
2 amendments made by subsection (e) shall apply to
3 failures after December 31, 2016.

4 (g) TRANSITION RULE.—Until such time as the Sec-
5 retary (or the Secretary’s delegate) issue regulations or
6 other guidance for purposes of implementing the require-
7 ments of paragraph (2)(C)(i)(II) of section 83(i) of the
8 Internal Revenue Code of 1986 (as added by this section),
9 or the requirements of paragraph (6) of such section, a
10 corporation shall be treated as being in compliance with
11 such requirements (respectively) if such corporation com-
12 plies with a reasonable good faith interpretation of such
13 requirements.

