Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 653 (Senator McCray)
Budget and Taxation Health and Government Operations

Procurement - Employee Stock Ownership Plan Preference - Pilot

This bill authorizes the Maryland Stadium Authority (MSA), Morgan State University (MSU), St. Mary's College of Maryland (SMCM), and Baltimore City Community College (BCCC) to establish a procurement evaluation factor of up to 10%, subject to approval by the Board of Public Works (BPW), for offerors that use an employee stock ownership plan (ESOP). The evaluation factor applies only to "covered" contracts that are (1) valued at less than $80 million and (2) solicited on or before June 30, 2030. **The bill takes effect July 1, 2025, and terminates on June 30, 2030.**

Fiscal Summary

State Effect: State expenditures (general, nonbudgeted, and higher education funds) may increase by up to 10% for each procurement contract to which MSA, MSU, SMCM, and BCCC elect to apply the ESOP evaluation factor. Revenues are not affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

"ESOP offeror" means a responsible offeror that uses an ESOP approved under § 401(A) of the Internal Revenue Code when making an offer on a procurement contract.

For competitive sealed proposals, a unit may include an ESOP evaluation factor in the technical evaluation for a competitive sealed proposal on a covered State procurement. If a point system is used for evaluation of proposals, the ESOP evaluation factor may be up to the percentage of the total allocable technical points (not to exceed 10%). If a point system is not used for evaluation of proposals, the ESOP evaluation factor may be ranked in its relative order of importance.

As a condition of receiving a contract with an ESOP preference, a contractor must submit, with its proposal, written verification of the Internal Revenue Service determination letter for its ESOP.

By December 1, 2028, MSA, BCCC, MSU, and SMCM must submit a report to the Legislative Policy Committee, the Senate Budget and Taxation Committee, and the House Health and Government Operations Committee containing (1) the number and dollar value of contracts awarded to ESOP offerors in accordance with the bill during fiscal 2026 through 2028 and (2) an evaluation of the effectiveness of the ESOP preference program.

Current Law:

Employee Stock Ownership Plan

Under § 401(A) of the Internal Revenue Code, ESOPs are a type of defined contribution retirement plan similar to 401(k) plans, but instead of investing in a portfolio of assets, the plan gives employees ownership interest in the company they work for.

Percentage Price Preferences

Evaluation factors work similarly to percentage price preferences in that the evaluation factor allows a specified category of businesses to receive a preference in the bidding process in the form of additional points or higher ranking. Current law provides two percentage-based price preferences: one for small businesses and another for locally grown foods. Under the Small Business Preference (SBP) program, and subject to approval by BPW, small businesses may receive a percentage preference of up to 8%, comprised of a base preference of 5% with an additional 2% for veteran-owned small businesses or 3% for disabled veteran-owned small businesses. This percentage preference applies only to competitive sealed bids but not competitive sealed proposals. Additionally, State schools and facilities must establish a percentage preference of up to 5% for food grown in the State. However, this preference cannot be combined with any other percentage-based preference.

State Expenditures: Procurement expenditures (general, higher education, and nonbudgeted funds) by MSA, BCCC, MSU, and SMCM may increase by up to 10% for each contract for which the evaluation factor is applied. As the application of the evaluation factor is optional, the number and value of covered contracts cannot be known in advance, and the evaluation factor applied may be less than 10%, a reliable estimate of the overall effect is not feasible.

Small Business Effect: The bill's optional evaluation factor potentially benefits some small businesses but may disadvantage others to the extent the evaluation factor is used by the applicable agencies. Many small businesses are privately owned and therefore unable to provide an ESOP to employees, putting them at a competitive disadvantage when competing with publicly owned businesses that do offer ESOPs. While small businesses receive up to a 5% preference under SBP, this advantage may be offset when competing with larger companies that offer ESOPs. However, small businesses that do offer ESOPs benefit from the bill. It is unclear if the evaluation factor authorized by the bill can be used in conjunction with a preference awarded under SBP. If it can, small businesses that offer ESOPs have a substantial advantage over competitors.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 819 (Delegate Guzzone, *et al.*) - Health and Government Operations.

Information Source(s): University System of Maryland; St. Mary's College of Maryland; Department of General Services; Board of Public Works; Maryland Stadium Authority; Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2025
km/mcr Third Reader - April 2, 2025
Revised - Amendment(s) - April 2, 2025
Enrolled - April 21, 2025
Revised - Amendment(s) - April 21, 2025

Analysis by: Andrew Stover

Direct Inquiries to:
(410) 946-5510
(301) 970-5510