Department of Legislative Services

Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 653 (Senator McCray)
Budget and Taxation

Procurement - Employee Stock Ownership Plan Preference - Pilot

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This bill requires the Maryland Stadium Authority (MSA), public four-year postsecondary institutions, and Baltimore City Community College (BCCC) to establish a percentage preference of up to 5%, subject to approval by the Board of Public Works (BPW), for bidders or offerors that use an employee stock ownership plan (ESOP). The price preference 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) increase by up to 5% for each procurement contract to which the ESOP price preference is applied. Revenues are not affected.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: In addition to MSA and BCCC, the bill applies to the University System of Maryland (USM), Morgan State University (MSU), and St. Mary's College of Maryland (SMCM).

"ESOP bidder" and "ESOP offeror" mean a responsible bidder or offeror that uses an ESOP approved under § 401(A) of the Internal Revenue Code when making a bid or offer on a procurement contract. Conversely, "non-ESOP bidder" and "non-ESOP offeror" refer to bidders and offerors that do not use ESOPs.

For competitive sealed bids, a unit must award a covered procurement contract to an ESOP bidder if the ESOP bidder either submits the lowest responsive bid or if the lowest responsive bid submitted by a non-ESOP bidder does not exceed the percentage preference established under the bill. For competitive sealed proposals, a unit must award a covered procurement contract to an ESOP offeror if the ESOP offeror submits a responsive proposal that is most advantageous to the State or if the difference between the ESOP offeror's proposal and the lowest responsive proposal from a non-ESOP offeror does not exceed the percentage preference established under this bill.

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

By December 1, 2028, MSA, BCCC, USM, 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 bidders and offerors in accordance with the bill during fiscal 2026 through 2028; (2) the amount of price preference applied to all contracts awarded in accordance with the bill; and (3) 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

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, USM, MSU, and SMCM increase by up to 5% for each contract for which the price preference is applied. As the number and value of covered contracts cannot be known in advance, and the price preference applied may be less than 5%, a reliable estimate of the overall effect is not feasible.

Small Business Effect: The bill's price preference potentially benefits some small businesses but may disadvantage others. Many small businesses are privately owned and therefore unable to provide an ESOP to employees, putting them at a competitive disadvantage when bidding against 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 price preference provided by the bill can be added to a preference awarded under SBP. If it can, small businesses that offer ESOPs have a substantial advantage over competitors (a price preference of between 10% and 13%).

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

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