HOUSE APPROPRIATIONS COMMITTEE
House Bill 385 –Maryland Economic Development Corporation – Student Housing Requirements – Leases and Health or Safety Emergencies
Maryland
Tuesday, February 8, 2022
Robert Page, USM Associate Vice Chancellor for Financial Affairs

Favorable with Amendment

Chair McIntosh, Vice Chair Chang and members of the committee, the University System of Maryland (USM) offers the following testimony to be considered in the deliberations over House Bill 385.

The USM places the fair treatment of its students and families as a highest priority in all aspects of making higher education safe, affordable and accessible to all. That includes ensuring that students and their families are treated fairly in seeking student housing.

House Bill 385, while including important provisions improving disclosure and awareness of who students and their families contract with, also includes provisions that will have significant, and we expect unintended consequences.

Since the mid-1990's, higher education institutions nationwide have been using what is known as public-private partnerships as a means of providing new, market-competitive and attractive student housing. The USM has participated in this trend, collaborating with the Maryland Economic Development Corporation, which serves as the 'project owner' and debt issuer, and which contracts with a private company to operate the project. Each project is built on state-owned land for the benefit of the university, and is restricted to educational use, which enables access to tax-exempt debt to fund the project. While each USM institution with a public-private partnership student housing project collaborates and cooperates with MEDCO, and its operator, closely and have highly aligned interests, the university does not own or control the projects at a decision-making level, and simply benefits from receiving ground rent for use of the land, and student housing stock made available to students that is attractive, safe and competitive with both university-owned housing, and that of the surrounding community.

Seven institutions of the USM have entered into public-private partnerships to provide student housing at their campuses, providing more than 7,000 student beds under license agreements, rather than leases. This is an important distinction both legally and practically. The use of licenses rather than leases is a significant aspect of the ability to ensure that student use of public-private partnerships provide the same level of assurance of a safe environment to students as is the case in university-owned student housing. Other than the use of license arrangements rather than leases, public-private partnership student housing facilities are more similar to private housing made available to students than to university-owned student housing. Rather than the campus' student housing operation managing public-private partnership student housing, it is a private operator that operates the facilities, creating advertising content, contracting for service provision to the projects, and setting the terms and conditions of the license arrangements at the core of the relationship between the operator and the student and their family.

The student-housing public-private partnerships entered into with the Maryland Economic Development Corporation have freed up almost a half billion of System debt capacity for use on other capital needs. These projects have been set up to have the private sector, through purchase of MEDCO-issued bonds to fund the construction, take on some portion of the operating and financial risk of running student housing. The student-housing public-private partnership structure results in the need for certain license termination provisions due to market dynamics. The adjustment of those termination provisions, which are the focus of the proposed changes to section 10-132 of the Economic Development Article of House Bill 385, put the projects' success in jeopardy.

The key consideration behind the use of public-private partnership student housing is the potential for real allocation of financial and operating risk to purchasers of debt used for the project, rather than having those risks assumed by the university. Bond rating agencies evaluate public-private partnership student housing projects as having little to no impact on the universities' credit capacity when (1) the university does not subsidize or back-stop the projects financially, and (2) when the utilization of the public-private partnership student-housing project produces financially at a level where all parties are being compensated, a standard called 'meeting 120% of debt service coverage.' When both conditions are satisfied, bond rating agencies reduce the impact of public-private partnership student housing projects on the System's bond rating, freeing up capacity for the System to borrow for other core capital needs.

Public-private partnership student housing projects, when operating in normal times, financially perform to meet bond purchasers' expectations when the rooms are fully utilized at a level of 95% or more. When the projects are operating financially in a way that meets contractual expectations and satisfies financial market benchmarks for operating results, the ground rent paid to the institution to compensate for the lease of the underlying land is the net income of the project after satisfying reserve requirements. Similarly, many of the institutions with public-private partnership student housing projects provide utilities, internet, and security for the projects on a cost-reimbursable basis, with the reimbursements to the university by the projects only made if the project is performing appropriately from a financial standpoint.

Across the USM, the public-private partnerships produce ground rent of close to $9M per year when all projects are performing well financially, and reimbursements to the universities for services and utilities provided totaling as much as $3-4M per year. The ground rent and expense reimbursements received by USM institutions is important to campus housing operations, with that revenue used to keep institution-owned room rates competitive and low.

If House Bill 385 were to be adopted as proposed, the public-private partnership student housing projects would suffer a market disadvantage, harming both purchasers and holders of the projects debt through weakening necessary lease or license provisions relative to the surrounding community and its purely private student housing options, but also System institutions, which with weaker performing projects, would receive lower amounts of ground rent. As a result of the weakened financial strength of the public-private partnership student housing projects resulting from legislatively mandated termination provisions, bond rating agencies would likely attribute a higher impact on the System's bond rating associated with the projects than is the case now.

With lower amounts of ground rent from public-private partnership student housing expected if House Bill 385 were to be adopted as drafted, institutions would be compelled to raise university-owned room rates, or be forced to dip into reserves of the institution's student-housing operations to cover the loss of revenue from the public-private partnership student housing projects.

The USM believes that an amendment to the proposed bill would improve transparency and awareness of students and their families about who they are contracting with, and on what terms, and not impose the significant consequences of loss of revenue and impact on the System's bond ratings. The USM respectfully requests the additions to Section 10-132 be struck in the bill.

The magnitude of the expected impact is variable and dependent upon local community student housing markets, but could be as much as $5-7M per year. The impact on the System's bond ratings would be to add as much as $250M in additional debt attributed to the USM, negating and eliminating the benefits of entering into public-private partnerships for student housing.

The University System of Maryland asks the committee for a favorable report on House Bill 385 with our suggested amendment.

About the University System of Maryland

The University System of Maryland (USM)—one system made up of 12 institutions, three regional centers, and a central office—awards 8 out of every 10 bachelor's degrees in the State of Maryland. The USM is governed by a Board of Regents, comprised of 21 members from diverse professional and personal backgrounds. The chancellor, Dr. Jay Perman, oversees and manages the operations of USM. However, each constituent institution is run by its own president who has authority over that university. Each of USM's 12 institutions has a distinct and unique approach to the mission of educating students and promoting the economic, intellectual, and cultural growth of its surrounding community. These institutions are located throughout the state, from western Maryland to the Eastern Shore, with the flagship campus in the Washington suburbs. The USM includes Historically Black Colleges and Universities, comprehensive institutions, research universities, and the country's largest public online institution.

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