



SENATE BUDGET AND TAXATION COMMITTEE

Senate Bill 653

Procurement - Employee Stock Ownership Plan Preference - Pilot

February 26, 2025

Unfavorable

Chair Guzzone, Vice Chair Rosapepe and members of the committee, thank you for allowing the University System of Maryland (USM) the opportunity to offer testimony on Senate Bill 653. The bill establishes a price preference for bids and proposals with the USM that utilize an employee stock ownership plan (ESOP).

The USM is comprised of twelve distinguished institutions, and three regional centers. We award eight out of every ten bachelor's degrees in the State. Each of University 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 three Historically Black Institutions, comprehensive institutions and research universities, and the country's largest public online institution.

ESOPs have been around since the 1950's, but it wasn't until the passage of ERISA in 1974 that stock option plans became widely accepted. The basic purpose of an ESOP is to transfer ownership of employer stock to the employees without having to resort to the sale of the business to "outsiders." An employee stock ownership plan (ESOP), overseen by the Internal Revenue Code (IRC) section 401(a), is a qualified defined contribution plan that is a stock bonus plan. ESOPs must be designed to invest primarily in qualifying employer securities that meet the requirements IRC section 4975(e)(8) and meet certain requirements of the Code and regulations.

The fiscal impact of Senate Bill 653 is difficult to determine. The bill would have an operational impact requiring changes to the USM Procurement Policies and Procedures that were updated last year with the approval of the USM Board of Regents, review of the Administrative Executive and Legislative Review Committee and approval of the Maryland Board of Public Works. The bill would require USM to establish a price preference for bidders\offerors who can verify that they offer one (of four) ESOPs the IRC allows.

Senate Bill 653 applies to contracts under \$80 million – essentially applying to all USM procurements because few USM contracts exceed that threshold. The bill would apply to both Invitations for Bid (IFB) procurements as well as Competitive Sealed Proposal (CSP) procurements. The bill would require USM to set a preference not to exceed 5% and award could be made to a firm that ***“exceeded the lowest bid”*** or ***“exceeded the lowest cost.”*** The percentage set would be subject to approval by both the USM Board of Regents (revisions to procurement policies see above) and the Maryland Board of Public Works.

The bill would also require USM to provide reports on the effectiveness of the program for fiscal years 2026, 2027 and 2028. It should be noted that price preferences are typically only used in an IFB where price is the determining factor in contract award. The bill's requirement to apply this to a CSP procurement would be extremely challenging to implement because each request for proposals is structured differently. For example, some RFP's give more weight to technical than financial so it is unclear how that part of the bill could be done. Moreover, the bill would have an operational impact based upon the above described changes that would need to be made and the creation of affidavits for bidders\offerors to certify that they offer ESOP. The reporting requirements would also add another operational burden on USM institutions some of whom only have one or two staff that are responsible for procurement.

The USM knows you're well aware of the current budget climate as we all are. The recently proposed deductions to our budget of 5% equate to \$111 million. This is in addition to last year's cut and another mid-year cut to the FY25 budget which leaves the USM down over \$180 million cumulatively in FY25 and FY26. The imposition of additional policy changes at this time would be more than challenging for all of our campuses on top of these reductions.

The bottom line is that adding more complexity, and potentially more costs, to an already complex procurement process negatively impacts small businesses, veteran owned business and minority businesses as the majority of these firms have sole ownership and do not trade publicly.

For these reasons, the USM respectfully requests an Unfavorable Report on Senate Bill 653.



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