

# STATE OF NEW YORK

5685--A

2017-2018 Regular Sessions

## IN SENATE

April 25, 2017

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business -- recommitted to the Committee on Commerce, Economic Development and Small Business in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the economic development law, the public authorities law and the tax law, in relation to the establishment of a state university-based center for employee ownership; and to repeal certain provisions of the economic development law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 104-a of the economic development law is REPEALED  
2 and a new section 104-a is added to read as follows:

3 § 104-a. Establishment of a state university-based center for employee  
4 ownership. With respect to employee ownership, the department shall  
5 establish a state university-based center for employee ownership "the  
6 center".

7 1. The center shall:

8 (a) provide education and outreach to inform business owners about the  
9 benefits of employee ownership successions;

10 (b) organize workshops and conferences on employee ownership  
11 successions;

12 (c) prepare and distribute materials concerning employee ownership  
13 successions;

14 (d) provide initial consultation to business owners exploring the  
15 possibility of transferring full or partial ownership to employees;

16 (e) provide a referral service to help business owners find legal,  
17 financial, and technical advice in connection with employee ownership  
18 successions;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (f) partner with key organizations, such as professional and trade  
 2 associations, financial institutions, unions, economic development  
 3 organizations, and other non-profit entities, to promote employee owner-  
 4 ship successions;

5 (g) conduct investigations, research, studies, and analyses on the  
 6 subject of employee ownership; and

7 (h) support the growth of associations of employee-owned companies.

8 2. The center shall additionally provide support and access in govern-  
 9 ment relations, including providing access to information regarding  
 10 rules and regulations that relate to employee ownership and develop  
 11 proposals for changes in policies to promote employee ownership.

12 § 2. Section 1836-a of the public authorities law, as added by chapter  
 13 788 of the laws of 1983, is amended to read as follows:

14 § 1836-a. Legislative findings. The legislature hereby finds and  
 15 declares that [~~the health, safety and general welfare of the people of~~  
 16 ~~this state are directly dependent upon the state economy, and that one~~  
 17 ~~of the principal problems of our present economy is the permanent clos-~~  
 18 ~~ing of industrial and manufacturing plants, and their relocation out of~~  
 19 ~~state, which results in the loss of jobs and increasing unemployment.~~

20 ~~It is the purpose of this subtitle to encourage the employees of~~  
 21 ~~plants that are about to be permanently closed, or relocated, to acquire~~  
 22 ~~such plants and to continue to operate them as employee-owned enter-~~  
 23 ~~prises, thereby retaining the jobs that would otherwise be lost, and~~  
 24 ~~strengthening the economic base of this state] employee ownership  
 25 program is a mainstream aspect of the United States economy with approx-  
 26 imately thirteen and a half million workers participating in some form  
 27 of employee ownership program at over seven thousand companies. The vast  
 28 majority of such programs are the result of a transfer from the business  
 29 owners to the employees and in accordance with federal law that seeks to  
 30 facilitate such transfers. Employee ownership transfers are in the  
 31 interest of business owners, who seek to liquidate their ownership  
 32 interest and retire. Such transfers are also in the interest of the  
 33 employees, who gain the opportunity to ensure the future survival of the  
 34 firm and their jobs.~~

35 The legislature also finds and declares that employee-owned busi-  
 36 nesses are more productive, enjoy increased sales, lower turnover rate  
 37 and greater longevity, offer better employment opportunities, and are  
 38 more likely to retain jobs in-state and less likely to relocate out-of-  
 39 state. Employee-owned businesses also sustain the state tax base  
 40 through employee and corporate income tax, while saving costs on unem-  
 41 ployment insurance and other state benefit programs. It is the purpose  
 42 of this subtitle to amplify federal programs in support of employee  
 43 ownership at the state level through loans and loan guarantees that  
 44 provide financing for the conversion of existing businesses to employee  
 45 ownership.

46 § 3. Subdivisions 3, 4, 5, 6, 7 and 8 of section 1836-b of the public  
 47 authorities law, subdivisions 3, 6, 7 and 8 as added by chapter 788 of  
 48 the laws of 1983, subdivisions 4 and 5 as amended by chapter 805 of the  
 49 laws of 1985, are amended to read as follows:

50 3. "Eligible project" means the acquisition [~~or rehabilitation~~] by an  
 51 employee ownership association of an existing [~~industrial or manufactur-~~  
 52 ~~ing plant~~] business located in this state for the purpose of operating  
 53 it as an employee-owned enterprise.

54 4. "Employee ownership association" means a corporation, limited  
 55 liability company, trust, or other association formed by or on behalf of  
 56 the employees of [~~an industrial or manufacturing plant~~] a business

1 located in this state for the purpose of assuming ownership or control  
2 of the [~~plant~~] business and operating it as an employee-owned enterprise  
3 or as a worker cooperative as defined in section eighty-one of the coop-  
4 erative corporations law.

5 "Employee-owned enterprise" means a business in which the employees  
6 are represented on the board of directors or managers and the employees  
7 control the majority of the voting stock or member interest, or if the  
8 business is held in a trust which controls the majority of the voting  
9 stock or member interest, the trustees are elected by the employees. The  
10 term "employee-owned enterprise" shall also refer to a worker cooper-  
11 ative as defined in section eighty-one of the cooperative corporations  
12 law.

13 6. [~~"Funding partner" means an entity which singly or in combination~~  
14 ~~with other entities has agreed to finance a portion of the project cost~~  
15 ~~of an eligible project, and may include the employee ownership associ-~~  
16 ~~ation undertaking the project as well as any financial entity.~~

17 7. [~~"Plant" includes the site, structure, building and equipment and~~  
18 ~~all real and personal property in connection therewith, whether or not~~  
19 ~~in existence, and may include any road, railroad, or utility or equip-~~  
20 ~~ment appurtenant thereto.~~

21 8.] "Project cost" includes all reasonable and necessary costs to be  
22 incurred in the course of an eligible project, including [~~any antic-~~  
23 ~~ipated acquisition,~~] the fair market value of the business interest to  
24 be acquired, as well as costs for any additional construction, land  
25 acquisition, improvements, equipment, pertinent rights and easements,  
26 and associated technical, engineering, legal and financial services.

27 § 4. The opening paragraph and paragraphs (a), (b) and (d) of subdivi-  
28 sion 1 and subdivision 2 of section 1836-c of the public authorities  
29 law, as added by chapter 788 of the laws of 1983, are amended to read as  
30 follows:

31 Any employee ownership association may apply to [~~a local development~~  
32 ~~corporation serving the municipality in which the eligible project is~~  
33 ~~located~~] the authority for an employee ownership assistance loan to be  
34 used to help finance an eligible project. Such application must include  
35 a written statement from the entity from which the project is being  
36 acquired, stating that such entity consents to the acquisition. The  
37 application shall include [~~in detail~~]:

38 (a) [~~the history and membership~~] a description of the employee owner-  
39 ship association;

40 (b) [~~the history and circumstances of the plant to be acquired~~] a  
41 description of the business;

42 (d) estimate of the number of jobs [~~to be saved or created by the~~  
43 ~~project~~] before and after the transaction; and

44 2. The application shall also include a detailed financial statement  
45 of [~~funding partner~~] actual and anticipated financial participation in  
46 the project, which shall include:

47 (a) the identity of all funding [~~partners~~] sources; [~~and~~]

48 (b) the nature of the financial participation, which may include, but  
49 is not limited to, seller notes, senior debt, junior debt, and equity  
50 investment; and

51 (c) the terms of the financing agreements with the funding [~~partners~~]  
52 sources, including any repayment schedules and finance charges to be  
53 included in such agreements.

54 § 5. Subdivision 1 of section 1836-d of the public authorities law, as  
55 added by chapter 788 of the laws of 1983, is amended to read as follows:

1 1. have a higher level of funding from the funding [~~partners~~] source  
2 or financial participant;

3 § 6. The section heading and subdivisions 1 and 3 of section 1836-e of  
4 the public authorities law, as added by chapter 788 of the laws of 1983,  
5 are amended and two new subdivisions 5 and 6 are added to read as  
6 follows:

7 Loan agreements and lending authority. 1. If the authority approves  
8 an application for a loan under this subtitle, the [~~local development~~  
9 ~~corporation~~] authority may enter into a loan agreement with the employee  
10 ownership association whereby the [~~local development corporation~~]  
11 authority agrees to loan to the employee ownership association the  
12 remaining funds necessary for the eligible project.

13 3. The [~~local development corporation~~] authority may not enter into  
14 any loan agreement unless the authority determines through an appropri-  
15 ate method that there is reasonable assurance of repayment. The authori-  
16 ty shall establish such requirements or terms as it may deem necessary  
17 or desirable to secure the repayment of the loan and to protect the  
18 interests of the authority and the holders of its bonds.

19 5. (a) The authority may establish a trust fund account for the  
20 purposes of providing a loan or loan guarantee pursuant to the  
21 provisions of this chapter. The initial deposit of funds to the trust  
22 fund shall be in an amount to be determined by the authority but shall  
23 not exceed one hundred million dollars from an amount otherwise avail-  
24 able from funds appropriated.

25 (b) The authority shall deposit into the trust fund all income earned  
26 from the moneys paid back from loans to be used for additional lending.

27 6. The authority shall make a loan decision or loan guarantee deci-  
28 sion, and inform the applicant of the authority's decision, no later  
29 than thirty days after the authority receives the applicant's applica-  
30 tion for an employee ownership loan or employee ownership loan guaran-  
31 tee. If the authority requests that an applicant supplement its applica-  
32 tion by submitting additional information, the authority shall have an  
33 additional fifteen days after receiving the additional information by  
34 which the authority must make a loan decision or a loan guarantee deci-  
35 sion and inform the applicant of the authority's decision.

36 § 7. Subsection (c) of section 612 of the tax law is amended by adding  
37 a new paragraph 44 to read as follows:

38 (44) One hundred percent of the capital gains from the sale of stock  
39 or member interest from a New York corporation or limited liability  
40 company to an employee-owned enterprise, as defined in subdivision five  
41 of section eighteen hundred thirty-six-b of the public authorities law.  
42 In order to qualify for such modification as described in this para-  
43 graph, such employee-owned enterprise must have its commercial domicile  
44 in New York. If the employee-owned enterprise is an "employee stock  
45 ownership plan," it must comply with federal requirements as such plan  
46 is defined in 26 U.S.C. § 4975(e)(7).

47 § 8. This act shall take effect immediately; provided, however, that  
48 section one of this act shall take effect on the one hundred eightieth  
49 day after it shall have become a law.