STATE OF NEW YORK

2184

2019-2020 Regular Sessions

IN SENATE

January 23, 2019

Introduced by Sens. BAILEY, ADDABBO, COMRIE, HOYLMAN, MONTGOMERY, PARKER, PERSAUD, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

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:

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 Section 104-a of the economic development law is REPEALED and a new section 104-a is added to read as follows:

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

1. The center shall:

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

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

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

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

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

(f) partner with key organizations, such as professional and trade associations, financial institutions, unions, economic development

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

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organizations, and other non-profit entities, to promote employee ownership successions;

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

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

2. The center shall additionally provide support and access in government relations, including providing access to information regarding rules and regulations that relate to employee ownership and develop proposals for changes in policies to promote employee ownership.

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

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

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

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

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

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

4. "Employee ownership association" means a corporation, limited liability company, trust, or other association formed by or on behalf of the employees of [~~an industrial or manufacturing plant~~] a business located in this state for the purpose of assuming ownership or control of the [~~plant~~] business and operating it as an employee-owned enterprise

or as a worker cooperative as defined in section eighty-one of the cooperative corporations law.

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

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

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

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

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

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

(a) [~~the history and membership~~] **a description** of the **employee ownership** association;

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

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

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

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

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

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

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

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

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

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

3. The [~~**local development corporation**~~] **authority** may not enter into any loan agreement unless the authority determines through an appropriate method that there is reasonable assurance of repayment. The authority shall establish such requirements or terms as it may deem necessary or desirable to secure the repayment of the loan and to protect the interests of the authority and the holders of its bonds.

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

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

6. The authority shall make a loan decision or loan guarantee decision, and inform the applicant of the authority's decision, no later than thirty days after the authority receives the applicant's application for an employee ownership loan or employee ownership loan guarantee. If the authority requests that an applicant supplement its application by submitting additional information, the authority shall have an additional fifteen days after receiving the additional information by which the authority must make a loan decision or a loan guarantee decision and inform the applicant of the authority's decision.

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

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

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