

# 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:

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 Section 104-a of the economic development law is REPEALED  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;

19 (f) partner with key organizations, such as professional and trade  
20 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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1 organizations, and other non-profit entities, to promote employee owner-  
2 ship successions;

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

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

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

10 § 2. Section 1836-a of the public authorities law, as added by chapter  
11 788 of the laws of 1983, is amended to read as follows:

12 § 1836-a. Legislative findings. The legislature hereby finds and  
13 declares that [~~the health, safety and general welfare of the people of~~  
14 ~~this state are directly dependent upon the state economy, and that one~~  
15 ~~of the principal problems of our present economy is the permanent clos-~~  
16 ~~ing of industrial and manufacturing plants, and their relocation out of~~  
17 ~~state, which results in the loss of jobs and increasing unemployment.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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