

******* JEDE AMENDMENTS *******

**SB 1407 (Becker): As Amended June 14, 2022
Submitted by: Toni Symonds, JEDE Committee Staff**

Summary of the Proposed Amendments

1. Changes the name of the overall activity to the creation of a “Hub” within the Office of the Small Business Advocate, rather than a “Program” to distinguish it from individual grant programs established by the bill.
2. Consolidates the annual reporting requirements.
3. Clarifies the purpose and applicability of the provisions related to ESOP participation in California capital programs.
4. Makes other technical and conforming changes.

Mock-up of the Proposed Amendments

SECTION 1. Article 6.6 (commencing with Section 12100.30) is added to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, immediately following Section 12100, to read:

Article 6.6. California Employee Ownership Act

12100.30. This article shall be known, and may be cited, as the California Employee Ownership Act.

12100.31. The Legislature finds and declares all of the following:

(a) California’s small businesses continue to contend with the pressures of the aging baby boomer business owners who are at or near retirement and desperately looking for an exit. According to national surveys, 79 percent of business owners want to retire within 10 years, 60 percent in less than 5 years, and 33 percent in less than 3 years. However, only 15 percent of businesses successfully transition to the next generation in the family, and only 20 percent of commercial listings actually sell. Nearly 360,000 California businesses, employing 3.9 million workers, are at risk because their owners are nearing retirement.

(b) Rather than closing for good or selling to large, out-of-state buyers, small business owners can find willing buyers in the people who work alongside them every day: their employees. Doing so would anchor essential production and services in communities, protect livelihoods, avert layoffs, and save the state money.

(c) Employees becoming owners would create opportunities for wealth-building and community stability. It would also help California create a more inclusive, equitable, and stable economy, supported by the studies of employee-owned businesses and their success and resiliency during the Great Recession and the COVID-19 pandemic.

(d) Fairness to employees is critical for the success of employee ownership transactions. Employee ownership should supplement, not supplant, fair wages, health insurance, retirement benefits, and the freedom to join a union.

Employee ownership transactions should be structured to provide employees with a fair valuation of their ownership stake with an independent trustee as a best practice for the transaction.

(e) It is the intent of the Legislature to establish a dedicated hub within the Office of Small Business Advocate that will help educate stakeholders about employee ownership, assist business owners and employees in navigating available resources, provide funding for education, outreach, and technical assistance, and streamline and reduce barriers to employee ownership.

12100.32. For purposes of this article, the following definitions shall apply:

(a) “Advocate” means the Small Business Advocate.

(b) “Broad-based employee ownership vehicle” means any of the following:

(1) An employee-owned corporation, as that term is defined in subdivision (c) of Section 91502.1.

(2) An eligible worker-owned cooperative or an eligible member-owned organization where the voting interest or stock is held by members, and the governing body is elected by the members on the basis of one vote per member.

(3) A business wherein the majority of stock is owned by an employee stock ownership plan.

(c) “California capital programs” means state programs offering capital assistance to businesses, including, but not limited to, the Small Business Loan Guarantee Program, the State Small Business Credit Initiative, the California Rebuilding Fund, and the California Capital Access Program.

(d) “CalOSBA” or “office” means the Office of Small Business Advocate within the Governor’s Office of Business and Economic Development.

(e) “Eligible worker-owned cooperative” has the same definition as that term is defined in paragraph (2) of subsection (c) of Section 1042 of the Internal Revenue Code, as that provision read on January 1, 2022.

(f) “Employee stock ownership plan” or “ESOP” has the same definition as that term is defined in paragraph (7) of subsection (e) of Section 4975 of the Internal Revenue Code, as that provision read on January 1, 2022.

(g) “Employee ownership transition” means the process of a business entering a broad-based employee ownership vehicle.

(h) “Feasibility assessment” means a financial assessment of a company’s debt capacity and other factors that will determine viable employee-ownership transition scenarios.

(i) “Independent ESOP trustee” means an ESOP trustee that is unrelated to the company, its officers, and its shareholders, and is in the business of serving as an ESOP fiduciary.

(j) “Manager” means the Employee Ownership Program Manager.

(k) “Program” means the California Employee Ownership Program, established pursuant to Section 12100.33.

12100.33. (a) Upon appropriation by the Legislature, the Office of Small Business Advocate shall establish the California Employee Ownership Hub Program, administered by an Employee Ownership Program Manager, appointed by the advocate.

(b) The manager shall administer the Employee Ownership Hub Program, and may be responsible for the following duties:

(1) Manage the Employee Ownership Education and Outreach ~~Grants~~ Grant Program and the Employee Ownership Conversion Technical Assistance Grant Program.

(2) (A) Work with all California state agencies whose regulations and programs affect employee-owned companies, and businesses with the potential to become employee-owned, to enhance opportunities and reduce barriers.

(B) For the purpose of developing recommendations to enhance the ability of employee owned companies to access California capital programs, the recommendations shall only apply to ESOPs that satisfy one of the following conditions:

(i) The ESOP has appointed an independent ESOP trustee.

(ii) The ESOP has, as a trustee, a person or entity that has completed education on ESOP trustee best practices.

(3) Partner with grantee partners, and other relevant private, nonprofit, and public organizations including, but not limited to, professional and trade associations, financial institutions, labor unions, worker centers, Small Business Development Centers, economic and workforce development organizations, and nonprofit entities to promote employee ownership benefits and succession models.

(4) Develop and make available materials regarding employee ownership benefits and succession models.

(5) Provide a referral service to help business owners, labor unions, and worker centers find appropriate legal, financial, and technical employee ownership resources and services.

(6) Work with the California Infrastructure and Economic Development Bank, the California Pollution Control Financing Authority, and related entities to ~~shape~~ remove barriers and implement guidance on lending to broad-based employee ownership vehicles.

~~(7) Issue an annual report~~ Report to the Legislature on program activities undertaken pursuant to this article during the prior fiscal year, including recommendations for improvement.

(A) The first report shall be due on January 15, following the first fiscal year in which funding is provided to implement any portion of this article.

(B) This reporting requirement may be met separately or the information may be included in the annual report required by subdivision (b) of Section 12098.4.

(C) The report shall also be posted on the website of the Office of the Small Business Advocate.

(8) Report employee ownership transition related concerns and recommendations to the advocate.

12100.34. (a) Upon appropriation by the Legislature, the manager shall establish and administer an Employee Ownership Education and Outreach Grant Program with the purpose of funding education and outreach programs that increase awareness and understanding of employee ownership transitions.

(b) Funding will be awarded to nonprofit organizations to develop and implement outreach initiatives and education programs that increase awareness about business transitions to broad-based employee ownership vehicles.

(c) The manager shall award grants to qualified nonprofit organizations for the purpose of performing qualified education and outreach services described in subdivision (g), including exactly one grant for the purpose of a marketing campaign as described in paragraph (2) of subdivision (g).

(d) Grant awards shall be made for an initial two-year term, beginning July 1, 2023, and ending June 1, 2025. Grantees may apply for renewal or extension of the initial two-year term, subject to approval by CalOSBA and availability of funds, through the 2026–27 fiscal year.

(e) The manager shall award grants to no more than five qualified nonprofit organizations during any two-year term.

(f) Indirect costs shall not exceed 15 percent of total expenses of each grant.

(g) (1) Qualified education and outreach services shall include the following:

(A) Services designed to increase awareness of worker ownership and transitions to broad-based employee ownership vehicles.

(B) Services designed primarily to reach a high volume of business owners through direct outreach, or through educational intermediaries, including the following:

(i) Capital providers.

(ii) Professional service providers.

(iii) Business technical assistance providers.

(iv) Industry and business associations.

(v) Labor unions and worker centers.

(vi) Local governmental entities.

(C) (i) Development of a statewide coordinated marketing campaign to increase business owner and business service provider awareness of transitions to broad-based employee ownership vehicles and available Employee Ownership Program resources, including the Employee Ownership Conversion Technical Assistance Grant Program established pursuant to Section 12100.35.

(ii) The marketing campaign shall be developed with input from, and made available to, all grantees and the manager, to enhance clear messaging and high-quality marketing in all services provided under the program.

(2) Qualified education and outreach services may also include outreach and education by labor unions and worker centers to businesses that may be a good fit for a transition to employee ownership.

(3) When delivering qualified education and outreach services, grantees shall include information on all types of broad-based employee ownership vehicles and on the range of governance and management structures that are possible within them, including democratically governed business structures and employee participation in business decisionmaking and governance.

(h) (1) To be eligible for a grant under the program, a qualified nonprofit organization shall satisfy all of the following:

(A) Demonstrated experience in providing outreach and education about worker ownership and about business transitions to one or more broad-based employee ownership vehicles.

(B) Demonstrated experience providing outreach and education services in California.

(2) Labor unions and worker centers may also be awarded grants in partnership with a qualified nonprofit organization to support education and outreach to businesses that are at risk of closure or succession.

(i) ~~(4)~~ The manager shall prepare an annual report meeting the requirements of Subparagraph (7) of Section 12100.33 that includes the following:

(A) Number of businesses reached.

(B) Types and number of outreach activities.

(C) The information provided through these activities.

~~(2) The manager shall submit this report to the Director of the Governor's Office of Business and Economic Development, and shall also make the report available on its internet website.~~

12100.35. (a) Upon appropriation by the Legislature, the manager shall establish and administer, or contract with a third party or grant partner to administer, an Employee Ownership Technical Assistance Grant Program with the purpose of subsidizing the cost of conversion to employee ownership.

(b) The purpose of the grant program is to partially subsidize conversion costs for qualified businesses transitioning to broad-based employee ownership vehicles, making these transitions more accessible to California businesses, ensuring these transitions benefit California workers, and creating wealth building opportunities for Californians.

(c) (1) The manager shall preapprove grant applications to qualified service providers, and disburse grant funds upon receipt of invoices or contracts for qualified conversion services rendered to one or more qualified businesses.

(2) Grant awards shall not exceed the lesser of 50 percent of the costs of qualified conversion services of a qualified business or fifty thousand dollars (\$50,000).

(3) Qualified service providers shall provide information about each qualified business receiving qualified conversion services, including the name, primary address, and business entity identifying number on file with the Secretary of State.

(d) For purposes of this section, the following definitions shall apply:

(1) (A) “Qualified business” means a business that is considering or undergoing a transition to employee ownership, and that satisfies all of the following:

(i) Is headquartered in California.

(ii) Has at least 10 employees.

(iii) Has been in business for at least 10 years.

(B) Notwithstanding subparagraph (A), the manager may make exceptions for businesses with as few as three employees, and for businesses in operation less than 10 years.

(2) “Qualified conversion services” shall include, but not be limited to, the following:

(A) Prefeasibility assessments.

(B) Feasibility assessments.

(C) Accounting services.

(D) Legal services.

(E) Transition plans.

(F) Succession planning services.

(G) Training for workers on employee ownership and democratic management and governance.

(3) (A) “Qualified service provider” means a provider of services listed in paragraph (2), that satisfies all of the following:

(i) Has at least two years of experience working with businesses considering or undertaking a transition to employee ownership.

(ii) In the case of a service provider that is providing feasibility studies, either has demonstrated experience in assessing debt capacity and conducting employee ownership feasibility studies, or is providing feasibility studies in collaboration with another business entity that has such demonstrated experience.

(B) A qualified service provider may provide for some or all of the services listed in paragraph (2) through contracts with other business entities.

(e) ~~(4)~~ The manager shall prepare an annual report meeting the requirements of Subparagraph (7) of Section 12100.33 that includes the following:

(A) Number of businesses served using funds awarded pursuant to this section.

(B) Types of services provided.

(C) Number of jobs created or saved.

~~(2) The manager shall submit this report to the Director of the Governor's Office of Business and Economic Development, and shall also make the report available on its internet website.—~~

12100.36. (a) ~~Except as provided in subdivision (b),~~ Nothing in this article does not prevent ~~prevents or creates an exclusion for~~ employee-owned companies from participating in California capital programs, including, but not limited to, the provision of commercial loans, subordinated debt, and synthetic equity to broad-based employee ownership vehicles, or the use of those programs for the purchase of, or facilitation of the purchase of, broad-based employee ownership vehicles.

~~(b) In order for an employee-owned company to participate in California capital programs, the ESOP must satisfy one of the following conditions:~~

~~(1) The ESOP has appointed an independent ESOP trustee.~~

~~(2) The ESOP has, as a trustee, a person or entity that has completed education on ESOP trustee best practices.~~

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