

AMENDED IN ASSEMBLY JUNE 14, 2022

AMENDED IN SENATE MARCH 16, 2022

SENATE BILL

No. 1407

Introduced by Senator Becker

(Principal coauthor: Assembly Member Kalra)

(Coauthors: Senators Borgeas, Ochoa Bogh, and Portantino)

~~(Coauthor: Assembly Member Haney and Ting)~~
(Coauthors: Assembly Members Haney and Ting)

February 18, 2022

An act to add Article 6.6 (commencing with Section 12100.30) to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, relating to economic development.

LEGISLATIVE COUNSEL'S DIGEST

SB 1407, as amended, Becker. California Employee Ownership ~~Program Act~~.

Existing law establishes the Office of Small Business Advocate (CalOSBA) within the Governor's Office of Business and Economic Development, also known as GO-Biz, to advocate for causes of small business and to provide small businesses with the information they need to survive in the marketplace.

This bill would, upon appropriation by the Legislature, establish the California Employee Ownership ~~Program Act~~ within the Office of Small Business Advocate, administered by an Employee Ownership Program Manager, to assist small businesses in transitioning to employee ownership. The bill would establish, upon appropriation by the Legislature, an Employee Ownership *Education and Outreach* ~~and Technical Assistance Grant Program~~, administered by the manager, for the purpose of funding education and outreach programs that increase awareness and ~~technical assistance for~~ *understanding of* employee

ownership transitions, as defined. ~~The grants would be awarded to no more than 5 qualified nonprofit organizations, as described, for purposes of performing qualified education and outreach services, as specified. The bill would require exactly one grant to be awarded to a qualified nonprofit organization for the purpose of developing a statewide coordinated marketing campaign related to transitions of businesses to employee ownership models.~~

~~The bill would also establish, upon appropriation by the Legislature, an Employee Ownership Feasibility Assessment Conversion Technical Assistance Grant Program, administered by the manager, to assist in the development of financial assessments to determine viable employee ownership transition scenarios. partially subsidize conversion costs for qualified businesses transitioning to broad-based employee ownership vehicles, as defined. The bill would direct the manager to preapprove grants and distribute grant funds to qualified service providers, as defined, upon receipt of invoices for qualified conversion costs. The bill would allow grants to cover the lesser of 50% of the cost of qualified conversion services, as defined, or \$50,000.~~

~~The bill would authorize employee-owned companies to participate in California capital programs under specified conditions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

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

4
5 Article 6.6. California Employee Ownership ~~Program~~ Act
6

7 12100.30. This article shall be known, and may be cited, as
8 the California Employee Ownership ~~Program~~ Act.

9 12100.31. The Legislature finds and declares all of the
10 following:

11 (a) California’s small businesses continue to contend with the
12 pressures of the aging baby boomer business owners who are at
13 or near retirement and desperately looking for an exit. According
14 to national surveys, 79 percent of business owners want to retire
15 within 10 years, 60 percent in less than 5 years, and 33 percent in

1 less than 3 years. However, only 15 percent of businesses
2 successfully transition to the next generation in the family, and
3 only 20 percent of commercial listings actually sell. Nearly 360,000
4 California businesses, employing 3.9 million workers, are at risk
5 because their owners are nearing retirement.

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

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

18 (d) *Fairness to employees is critical for the success of employee*
19 *ownership transactions. Employee ownership should supplement,*
20 *not supplant, fair wages, health insurance, retirement benefits,*
21 *and the freedom to join a union. Employee ownership transactions*
22 *should be structured to provide employees with a fair valuation*
23 *of their ownership stake with an independent trustee as a best*
24 *practice for the transaction.*

25 ~~(d)~~

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

33 12100.32. For purposes of this article, the following definitions
34 shall apply:

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

36 ~~(a)~~

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

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

- 1 (2) An eligible worker-owned cooperative or an eligible
- 2 member-owned organization where the voting *interest or* stock is
- 3 ~~owned~~ *held* by members, and the governing body is elected by the
- 4 members on the basis of one vote per member.
- 5 (3) A business wherein the majority of stock is owned by an
- 6 employee stock ownership plan.
- 7 ~~(b)~~
- 8 (c) “California capital programs” means state programs offering
- 9 capital assistance to businesses, including, but not limited to, the
- 10 Small Business Loan Guarantee Program, the State Small Business
- 11 Credit Initiative, the California Rebuilding Fund, and the California
- 12 Capital Access Program.
- 13 (d) “CalOSBA” or “office” means the *Office of Small Business*
- 14 *Advocate within the Governor’s Office of Business and Economic*
- 15 *Development.*
- 16 ~~(e)~~
- 17 (e) “Eligible worker-owned cooperative” has the same definition
- 18 as that term is defined in paragraph (2) of subsection (c) of Section
- 19 1042 of the Internal Revenue Code, as that provision read on
- 20 January 1, 2022.
- 21 ~~(f)~~
- 22 (f) “Employee stock ownership plan” or “ESOP” has the same
- 23 definition as that term is defined in paragraph (7) of subsection
- 24 (e) of Section 4975 of the Internal Revenue Code, as that provision
- 25 read on January 1, 2022.
- 26 ~~(e)~~
- 27 (g) “Employee ownership transition” means the process ~~by~~
- 28 ~~which~~ *of* a business ~~enters~~ *entering* a broad-based employee
- 29 ownership vehicle.
- 30 ~~(f)~~
- 31 (h) “Feasibility assessment” means a financial assessment of a
- 32 company’s debt capacity and other factors that will determine
- 33 viable employee-ownership transition scenarios.
- 34 (i) “Independent ESOP trustee” means an *ESOP trustee that*
- 35 *is unrelated to the company, its officers, and its shareholders, and*
- 36 *is in the business of serving as an ESOP fiduciary.*
- 37 ~~(g)~~
- 38 (j) “Manager” means the Employee Ownership Program
- 39 Manager.

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

3 12100.33. (a) Upon appropriation by the Legislature, the Office
4 of Small Business Advocate shall establish the California Employee
5 Ownership Program, administered by an Employee Ownership
6 Program ~~Manager~~. *Manager, appointed by the advocate.*

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

9 (1) Manage the Employee Ownership *Education and Outreach*
10 ~~and Technical Assistance Grants Program and the Employee~~
11 ~~Ownership Feasibility Assessment Study Grants Conversion~~
12 ~~Technical Assistance Grant Program.~~

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

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

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

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

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

33 (7) Issue an annual report on program activities including
34 recommendations for improvement.

35 (8) Report employee ownership transition related concerns and
36 recommendations to the ~~director~~. *advocate.*

37 12100.34. (a) Upon appropriation by the Legislature, the
38 manager shall establish and administer an Employee Ownership
39 *Education and Outreach* ~~and Technical Assistance Grant Program~~
40 with the purpose of funding education and outreach programs that

1 increase awareness and ~~technical assistance for~~ *understanding of*
2 *employee ownership transitions.*

3 (b) Funding will be ~~allocated~~ *awarded* to nonprofit organizations
4 ~~with demonstrated experience and expertise in delivering employee~~
5 ~~ownership services in California and should encompass diverse to~~
6 ~~develop and implement outreach initiatives and education~~
7 ~~programs that increase awareness about business transitions to~~
8 *broad-based employee ownership vehicles.*

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

14 (d) *Grant awards shall be made for an initial two-year term,*
15 *beginning July 1, 2023, and ending June 1, 2025. Grantees may*
16 *apply for renewal or extension of the initial two-year term, subject*
17 *to approval by CalOSBA and availability of funds, through the*
18 *2026–27 fiscal year.*

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

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

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

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

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

31 (i) *Capital providers.*

32 (ii) *Professional service providers.*

33 (iii) *Business technical assistance providers.*

34 (iv) *Industry and business associations.*

35 (v) *Labor unions and worker centers.*

36 (vi) *Local governmental entities.*

37 (C) (i) *Development of a statewide coordinated marketing*
38 *campaign to increase business owner and business service provider*
39 *awareness of transitions to broad-based employee ownership*
40 *vehicles and available Employee Ownership Program resources,*

1 *including the Employee Ownership Conversion Technical*
2 *Assistance Grant Program established pursuant to Section*
3 *12100.35.*

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

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

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

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

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

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

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

29 *(i) (1) The manager shall prepare an annual report that*
30 *includes the following:*

31 *(A) Number of businesses reached.*

32 *(B) Types and number of outreach activities.*

33 *(C) The information provided through these activities.*

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

37 *12100.35. (a) Upon appropriation by the Legislature, the*
38 *manager shall establish and administer, or contract with a third*
39 *party or grant partner to administer, an Employee Ownership*
40 *Feasibility Assessment Technical Assistance Grant Program with*

1 the purpose of subsidizing the cost of ~~feasibility assessments for~~
2 conversion to employee ownership.

3 ~~(b) Qualifying businesses will receive a grant equal to 50 percent~~
4 ~~of the cost of a feasibility assessment for conversion to employee~~
5 ~~ownership up to a maximum of fifty thousand dollars (\$50,000).~~

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

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

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

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

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

25 *(1) (A) "Qualified business" means a business that is*
26 *considering or undergoing a transition to employee ownership,*
27 *and that satisfies all of the following:*

28 *(i) Is headquartered in California.*

29 *(ii) Has at least 10 employees.*

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

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

34 *(2) "Qualified conversion services" shall include, but not be*
35 *limited to, the following:*

36 *(A) Prefeasibility assessments.*

37 *(B) Feasibility assessments.*

38 *(C) Accounting services.*

39 *(D) Legal services.*

40 *(E) Transition plans.*

- 1 (F) *Succession planning services.*
- 2 (G) *Training for workers on employee ownership and*
- 3 *democratic management and governance.*
- 4 (3) (A) *“Qualified service provider” means a provider of*
- 5 *services listed in paragraph (2), that satisfies all of the following:*
- 6 (i) *Has at least two years of experience working with businesses*
- 7 *considering or undertaking a transition to employee ownership.*
- 8 (ii) *In the case of a service provider that is providing feasibility*
- 9 *studies, either has demonstrated experience in assessing debt*
- 10 *capacity and conducting employee ownership feasibility studies,*
- 11 *or is providing feasibility studies in collaboration with another*
- 12 *business entity that has such demonstrated experience.*
- 13 (B) *A qualified service provider may provide for some or all of*
- 14 *the services listed in paragraph (2) through contracts with other*
- 15 *business entities.*
- 16 (e) (1) *The manager shall prepare an annual report that*
- 17 *includes the following:*
- 18 (A) *Number of businesses served using funds awarded pursuant*
- 19 *to this section.*
- 20 (B) *Types of services provided.*
- 21 (C) *Number of jobs created or saved.*
- 22 (2) *The manager shall submit this report to the Director of the*
- 23 *Governor’s Office of Business and Economic Development, and*
- 24 *shall also make the report available on its internet website.*
- 25 ~~12100.36. (a) Nothing in Except as provided in subdivision~~
- 26 ~~(b), this article shall does not prevent the California Infrastructure~~
- 27 ~~and Economic Development Bank and the California Pollution~~
- 28 ~~Control Financing Authority from utilizing eligible funds for~~
- 29 ~~assisting with employee ownership transitions, including~~
- 30 ~~employee-owned companies from participating in California~~
- 31 ~~capital programs, including, but not limited to, the provision of~~
- 32 ~~commercial loans, subordinated debt, and synthetic equity to~~
- 33 ~~broad-based employee ownership vehicles, or the use of those~~
- 34 ~~programs for the purchase of, or facilitation of the purchase of,~~
- 35 ~~broad-based employee ownership vehicles provided that the~~
- 36 ~~transaction results in the broad-based employee ownership vehicles~~
- 37 ~~holding a majority interest in the business. vehicles.~~
- 38 ~~(b) Nothing in this article shall prevent employee-owned~~
- 39 ~~companies from participating in California capital programs~~
- 40 ~~including the provision of commercial loans, subordinated debt,~~

1 and synthetic equity to broad-based employee ownership vehicles,
2 or for the purchase of, or facilitation of the purchase of,
3 broad-based employee ownership vehicles provided that the
4 transaction results in the broad-based employee ownership vehicles
5 holding a majority interest in the business.

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

9 *(1) The ESOP has appointed an independent ESOP trustee.*

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