
SENATE BILL 5096

State of Washington

68th Legislature

2023 Regular Session

By Senators Padden and Pedersen

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1 AN ACT Relating to expanding employee ownership; adding new
2 sections to chapter 43.330 RCW; adding a new section to chapter 82.04
3 RCW; creating new sections; providing an effective date; and
4 providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that:

7 Employee ownership in companies provides numerous benefits to
8 both businesses and workers across all industries. Research from the
9 national center for employee ownership found that one such structure,
10 employee stock ownership plans, had better workforce retention,
11 benefits and retirement security, and firm performance than
12 nonemployee stock ownership plans companies in the same industry. In
13 addition, the Rutgers school of management and labor relations found
14 that employee-owned companies outperformed nonemployee-owned
15 companies in job retention, pay, and workplace health safety
16 throughout the COVID-19 pandemic. At their core, employee ownership
17 structures allow employees to gain ownership stake in a business,
18 increasing their personal wealth without the risks related to
19 starting or purchasing their own company.

20 States throughout the nation have moved to provide support for
21 employee ownership structures. The Colorado employee ownership office

1 has operated since 2019 to create a network of technical support and
2 service providers considering employee ownership structures.
3 Recently, both California and Massachusetts passed legislation to
4 establish their own dedicated employee ownership support programs.
5 Other states, such as Iowa, provide tax benefits and upfront costs to
6 businesses interested in employee ownership.

7 Further, the federal government has recognized the benefit broad-
8 based employee ownership structures provide to communities. The
9 American rescue plan act included \$10,000,000,000 for the state small
10 business credit initiative. Through that act congress also directed
11 the treasury department to allow state small business credit
12 initiative funding to be used for transitions to employee ownership,
13 when state small business credit initiative funding has not been
14 historically available for business transactions.

15 The legislature desires to provide a dedicated program to educate
16 businesses on employee ownership, assist both owners and workers in
17 navigating available resources, reduce barriers to transitioning to
18 employee-owned structures, and provide tax support for businesses
19 that transition to an employee ownership structure.

20 Therefore, it is the intent of the legislature to encourage the
21 growth of employee ownership structures through this expanding
22 employee ownership act.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.330
24 RCW to read as follows:

25 (1) The Washington employee ownership program is created to
26 support the efforts of businesses considering a sale to an employee
27 ownership structure. The Washington employee ownership program must
28 be administered by the department and overseen by the Washington
29 employee ownership commission established in section 3 of this act.

30 (2)(a) In implementing the Washington employee ownership program,
31 the director must:

32 (i) Create a network of technical support and service providers
33 for businesses considering employee ownership structures;

34 (ii) Work with state agencies whose regulations and programs
35 affect employee-owned businesses, and businesses with the potential
36 to become employee owned, to enhance opportunities and reduce
37 barriers;

38 (iii) Partner with relevant private, nonprofit, and public
39 organizations including, but not limited to, professional and trade

1 associations, financial institutions, unions, small business
2 development centers, economic and workforce development
3 organizations, and nonprofit entities to promote employee ownership
4 benefits and succession models;

5 (iv) Develop and make available materials regarding employee
6 ownership benefits and succession models;

7 (v) Provide a referral service to help qualified business owners
8 find appropriate legal, financial, and technical employee ownership
9 resources and services;

10 (vi) Work with the department of financial institutions and
11 appropriate state, private, and nonprofit entities to shape and
12 implement guidance on lending to broad-based employee ownership
13 vehicles; and

14 (vii) Subject to the successful award of federal funding for this
15 purpose, establish a revolving loan program to assist existing small
16 businesses to finance a transition to employee ownership.

17 (b) Loans offered by the revolving loan program must be used to
18 help facilitate the purchase of an interest in an employee stock
19 ownership plan or worker-owned cooperative from the owner or owners
20 of a qualified business, provided that:

21 (i) The transaction results in the employee stock ownership plan
22 or worker cooperative holding a majority interest in the business, on
23 a fully diluted basis; and

24 (ii) If used to assist in the purchase of an interest in an
25 employee stock ownership plan, the employee stock ownership plan: (A)
26 Has appointed an independent trustee; or (B) has, as a trustee,
27 person, or entity, completed education on best practices for employee
28 stock ownership plans.

29 (c) Loans financing the sale of an interest to a worker
30 cooperative shall be extended based on repayment ability and shall
31 not require a personal or entity guarantee. In meeting the
32 requirement in (b) of this subsection, lending guidelines must be
33 established for worker cooperatives not based on any personal or
34 entity guarantees provided by the member owners or the selling
35 business owner. These guidelines may include but are not limited to
36 cash flow-based underwriting, character-based lending, and reliance
37 on business assets.

38 (d) In order to support the revolving loan program, the director
39 or the director's designee must apply for federal funding
40 opportunities that:

1 (i) Support capitalization of state revolving loan programs; and
2 (ii) Support businesses that seek to transition to employee
3 ownership.

4 (e) Amounts from the repayment of loans offered by the revolving
5 loan program must be deposited in the employee ownership revolving
6 loan program account established in section 7 of this act.

7 (3) The director or the director's designee may contract with
8 consultants, agents, or advisors necessary to further the purposes of
9 this section.

10 (4) By December 1st each year, the department must submit a
11 report to the appropriate committees of the legislature on program
12 activities, including recommendations for improvement and barriers
13 for businesses considering employee ownership structures in
14 Washington state. The first report must include rules and guidelines
15 for the administration of the program, as established by the
16 Washington employee ownership commission.

17 (5) For the purposes of this section:

18 (a) "Employee-owned business" means an employee cooperative
19 established under chapter 23.78 RCW and an entity owned in whole or
20 in part by employee stock ownership plans as defined in 26 U.S.C.
21 Sec. 4975(e)(7).

22 (b) "Qualified business" means a person subject to tax under
23 Title 82 RCW, including but not limited to a C corporation, S
24 corporation, limited liability company, partnership, limited
25 liability partnership, sole proprietorship, or other similar pass-
26 through entity, that is not owned in whole or in part by an employee
27 ownership trust, that does not have an employee stock ownership plan,
28 or that is not, in whole or in part, a worker-owned cooperative.

29 (6) Program support shall only be made available to businesses
30 headquartered in Washington state. For the purposes of this section,
31 "headquartered in Washington state" means that Washington state is
32 its principal place of business or the state where it is
33 incorporated.

34 (7) The director shall adopt rules as necessary to implement this
35 section.

36 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.330
37 RCW to read as follows:

1 (1) The Washington employee ownership commission is hereby
2 created to exercise the powers in developing and supervising the
3 program created in section 2 of this act.

4 (2) The commission shall consist of:

5 (a) One member from each of the two major caucuses of the house
6 of representatives to be appointed by the speaker of the house and
7 one member from each of the two major caucuses of the senate to be
8 appointed by the president of the senate. The initial term shall be
9 two years; and

10 (b) The following members appointed by the governor:

11 (i) Five members who represent the private sector or professional
12 organizations as follows:

13 (A) One representative of a small business utilizing employee
14 ownership structures. The initial term shall be four years;

15 (B) One representative of a large business utilizing employee
16 ownership structures. The initial term shall be four years;

17 (C) One representative from a statewide business association. The
18 initial term shall be two years;

19 (D) One economic development expert, from the private sector. The
20 initial term shall be four years; and

21 (E) One representative from a financial institution with
22 expertise in assisting businesses transitioning into an employee
23 ownership structure. The initial term shall be two years; and

24 (ii) Two members who represent the public sector as follows:

25 (A) One economic development expert, from the public sector. The
26 initial term shall be four years; and

27 (B) One representative from the department of commerce, who will
28 chair the first meeting prior to the election of the chair. The
29 initial term shall be four years.

30 (3) After the initial term of appointment, all members shall
31 serve terms of four years and shall hold office until successors are
32 appointed.

33 (4) The commission shall be led by a chair selected and voted on
34 by members of the commission. The chair shall serve a one-year term
35 but may serve more than one term if selected to do so by members of
36 the commission.

37 (5) The commission shall develop, in consultation with the
38 director, rules and guidelines to administer the program. Rules and
39 guidelines for the administration of the program must be included in

1 the first report to the legislature required in section 2 of this
2 act.

3 (6) Before making any appointments to the commission, the
4 governor must seek nominations from recognized organizations that
5 represent the entities or interests identified in this section. The
6 governor must select appointees to represent private sector
7 industries from a list of three nominations provided by the trade
8 associations representing the industry, unless no names are put forth
9 by the trade associations.

10 (7) For purposes of this section, a "professional organization"
11 includes an entity whose members are engaged in a particular lawful
12 vocation, occupation, or field of activity of a specialized nature
13 including, but not limited to, associations, boards, educational
14 institutions, and nonprofit organizations.

15 NEW SECTION. **Sec. 4.** (1) This section is the tax preference
16 performance statement for the tax preference contained in section 5,
17 chapter . . ., Laws of 2023 (section 5 of this act). This performance
18 statement is only intended to be used for subsequent evaluation of
19 the tax preference. It is not intended to create a private right of
20 action by any party or be used to determine eligibility for
21 preferential tax treatment.

22 (2) The legislature categorizes this tax preference as one
23 intended to induce certain designated behavior by taxpayers, as
24 indicated in RCW 82.32.808(2) (a).

25 (3) It is the legislature's specific public policy objective to
26 encourage business owners to create an employee stock ownership plan
27 or employee ownership trust, or to convert to a worker-owned
28 cooperative, that allows the company to share ownership with their
29 employees without requiring employees to invest their own money.

30 (4) If a review finds that the number of businesses in this state
31 offering employee stock ownership plans, employee ownership trusts,
32 or ones that have converted to a worker-owned cooperative, has
33 increased because of the tax credit under this act, then the
34 legislature intends for the legislative auditor to recommend
35 extending the expiration date of the tax preference.

36 (5) In order to obtain the data necessary to perform the review
37 in subsection (4) of this section, the joint legislative audit and
38 review committee may access and use any relevant data collected by
39 the state.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.04
2 RCW to read as follows:

3 (1) Beginning July 1, 2024, in computing the tax imposed under
4 this chapter, a credit is allowed for costs related to converting a
5 qualifying business to a worker-owned cooperative, employee ownership
6 trust, or an employee stock ownership plan, as provided in this
7 section.

8 (2) The credit is equal to:

9 (a) Up to 50 percent of the conversion costs, not to exceed
10 \$25,000, incurred by a qualified business for converting the
11 qualified business to a worker-owned cooperative or an employee
12 ownership trust; or

13 (b) Up to 50 percent of the conversion costs, not to exceed
14 \$100,000, incurred by a qualified business for converting the
15 qualified business to an employee stock ownership plan.

16 (3) (a) Credit under this section is earned, and claimed against
17 taxes due under this chapter, for the tax reporting period in which
18 the conversion to a worker-owned cooperative, employee ownership
19 trust, or an employee stock ownership plan is complete, or subsequent
20 tax reporting periods as provided in (c) of this subsection.

21 (b) The credit must not exceed the tax otherwise due under this
22 chapter for the tax reporting period.

23 (c) Unused credit may be carried over and used in subsequent tax
24 reporting periods, except that no credit may be claimed more than 12
25 months from the end of the tax reporting period in which the credit
26 was earned.

27 (d) No refunds may be granted for credits under this section.

28 (4) (a) The total amount of credits authorized under this section
29 may not exceed an annual statewide limit of \$2,000,000.

30 (b) Credits must be authorized on a first-in-time basis.

31 (c) No credit may be earned, during any calendar year, on or
32 after the last day of the calendar month immediately following the
33 month the department has determined that \$2,000,000 in credit has
34 been earned.

35 (5) (a) The department may require persons claiming a credit under
36 this section to provide appropriate documentation, in a manner as
37 determined by the department, for the purposes of determining
38 eligibility under this section.

1 (b) Every person claiming a credit under this section must
2 preserve, for a period of five years, any documentation to
3 substantiate the amount of credit claimed.

4 (6) For the purposes of this section:

5 (a) "Conversion costs" means professional services, including
6 accounting, legal, and business advisory services, as detailed in the
7 guidelines issued by the department, for: (i) A feasibility study or
8 other preliminary assessments regarding a transition of a business to
9 an employee stock ownership plan, a worker-owned cooperative, or an
10 employee ownership trust; or (ii) the transition of a business to an
11 employee stock ownership plan, a worker-owned cooperative, or an
12 employee ownership trust.

13 (b) "Employee ownership trust" means an indirect form of employee
14 ownership in which a trust holds a controlling stake in a qualified
15 business and benefits all employees on an equal basis.

16 (c) "Employee stock ownership plan" has the same meaning as set
17 forth in 26 U.S.C. Sec. 4975(e)(7), as amended.

18 (d) "Qualified business" means a person subject to tax under this
19 chapter, including but not limited to a C corporation, S corporation,
20 limited liability company, partnership, limited liability
21 partnership, sole proprietorship, or other similar pass-through
22 entity, that is not owned in whole or in part by an employee
23 ownership trust, that does not have an employee stock ownership plan,
24 or that is not, in whole or in part, a worker-owned cooperative, and
25 that is approved by the department for the tax credit in this
26 section.

27 (e) "Worker-owned cooperative" has the same meaning as set forth
28 in 26 U.S.C. Sec. 1042(c)(2), as amended.

29 (7) Credits allowed under this section can be earned for tax
30 reporting periods starting on or before June 30, 2029. No credits can
31 be claimed on returns filed for tax periods starting on or after July
32 1, 2030.

33 (8) This section expires July 1, 2030.

34 NEW SECTION. **Sec. 6.** Subject to the availability of funding,
35 the small business collateral support program administered by the
36 Washington state department of commerce as part of the state small
37 business credit initiative program must include program eligibility
38 for the purchase of an interest in an employee stock ownership plan
39 qualifying under section 401 of the internal revenue code, worker

1 cooperative, or related broad-based employee ownership vehicle,
2 provided that the transaction results in the employee stock ownership
3 plan or other employee-owned entity holding a majority interest, on a
4 fully diluted basis, in the business.

5 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.330
6 RCW to read as follows:

7 The employee ownership revolving loan program account is created
8 in the custody of the state treasury. All transfers and
9 appropriations by the legislature, repayments of loans, private
10 contributions, and all other sources must be deposited into the
11 account. Expenditures from the account may be used only for the
12 purposes of the Washington employee ownership program created in
13 section 2 of this act. Only the director or the director's designee
14 may authorize expenditures from the account. The account is subject
15 to allotment procedures under chapter 43.88 RCW, but an appropriation
16 is not required for expenditures.

17 NEW SECTION. **Sec. 8.** Sections 4 and 5 of this act take effect
18 July 1, 2024.

19 NEW SECTION. **Sec. 9.** This act may be known and cited as the
20 expanding employee ownership act.

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