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SB-1407 California Employee Ownership Act. (2021-2022)

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Senate Bill No. 1407

CHAPTER 733

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.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1407, Becker. California Employee Ownership 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 Hub within the Office of Small Business Advocate to increase awareness and understanding of employee ownership among stakeholders, assist business owners and employees in navigating available resources, and streamline and reduce barriers to employee ownership. The bill would require an Employee Ownership Hub Manager to administer the hub, and would authorize the manager to be responsible for prescribed duties, including partnering with specified state agencies and private entities to promote employee ownership transitions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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, 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 through an Employee Stock Ownership Plan (ESOP) 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. Professional feasibility assessments are a best practice for transitions to all broad-based employee ownership forms.

(e) While the benefits of employee ownership are well documented, many stakeholders in the business and workforce ecosystems are unaware of broad-based employee ownership forms and their benefits, best practices for their implementation, or opportunities for their widespread expansion. In partnership with leaders in the field of employee ownership, the State of California can play a catalytic role in raising awareness of all forms of broad-based employee ownership, increasing access to capital for employee-owned enterprises, encouraging best practices, and ensuring that workers who are most burdened by income and wealth inequality and the racial wealth gap gain access to wealth, quality jobs, and workplace voice through employee ownership.

(f) It is the intent of the Legislature to establish a dedicated hub within the Office of Small Business Advocate that will increase awareness and understanding of employee ownership among stakeholders, assist business owners and employees in navigating available resources, and streamline and reduce barriers to employee ownership.

12100.32. For purposes of this article, the following definitions 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, as defined in subdivision (e).

(3) A business wherein the majority of stock is owned by an employee stock ownership plan, as defined in subdivision (f), or by another trust on behalf of the company's employees.

(4) A business wherein the majority of which is owned by a trust that has the purposes of creating employee ownership and of promoting the financial and nonfinancial interests of all employees.

(5) A "worker cooperative" or "employment cooperative," as defined in subdivision (k).

(6) A member-owned organization that includes workers as members and where the voting interest or stock is held by members, and the majority of the governing body is elected by the members on the basis of one vote per member.

(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 Hub Manager.

(k) "Worker cooperative" or "employment cooperative" has the same definition as those terms are defined in Section 12253.5 of the Corporations Code.

12100.33. (a) Upon appropriation by the Legislature, CalOSBA shall establish the California Employee Ownership Hub, administered by an Employee Ownership Hub Manager, appointed by the advocate.

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

(1) 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.

(2) Partner with 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 educate business owners and employees about the benefits of employee ownership and employee ownership transition succession models.

(3) Share materials regarding employee ownership benefits and employee ownership transition succession models.

(4) Provide a referral service to help business owners, labor unions, workers, and worker centers find appropriate legal, financial, and technical employee ownership resources and services to assist in employee ownership transitions and the growth of employee-owned businesses.

(5) Work with the California Infrastructure and Economic Development Bank, the California Pollution Control Financing Authority, and related entities to develop recommendations and enhance the ability of broad-based employee ownership vehicles to access California capital programs. Those recommendations shall only apply to ESOPs to the extent that the ESOPs satisfy one of the following conditions:

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

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

(6) Report to the Legislature, in accordance with Section 9795, on activities undertaken by the hub 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) CalOSBA shall also post the report to its internet website.

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