

# SENATE BILL REPORT

## SB 5096

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As of February 6, 2023

**Title:** An act relating to expanding employee ownership.

**Brief Description:** Concerning employee ownership.

**Sponsors:** Senators Padden, Pedersen, Hasegawa and Schoesler.

**Brief History:**

**Committee Activity:** Business, Financial Services, Gaming & Trade: 1/12/23, 1/24/23  
[DPS-WM].

Ways & Means: 2/06/23.

**Brief Summary of First Substitute Bill**

- Creates the Washington Employee Ownership Program (program) at the Department of Commerce to offer technical support, and other services, to certain businesses considering certain employee ownership structures.
- Forms the Washington Employee Ownership Commission to oversee the program.
- Provides a business and occupation tax credit for costs related to converting a qualifying business to an employee ownership structure.

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### SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

**Majority Report:** That Substitute Senate Bill No. 5096 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Stanford, Chair; Frame, Vice Chair; Dozier, Ranking Member; Boehnke, Gildon, Hasegawa, Lovick, MacEwen and Mullet.

**Staff:** Kellee Gunn (786-7429)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Trevor Press (786-7446)

**Background:** Employee Ownership Structures. Employee ownership refers to the arrangement where no one person has the most shares or control over an organization. Some of the most common forms of employee ownership include Employee Stock Ownership Plans (ESOPs), Employee Ownership Trusts (EOTs), and Cooperatives (Co-ops).

Employee Stock Ownership Plans. ESOPs are recognized under federal tax law as a qualified defined contribution retirement plan. The ESOP must be designed to invest primarily in qualifying employer securities and meet certain other requirements. The IRS and United States Department of Labor share jurisdiction over some ESOP features.

Employee Ownership Trusts. EOTs are not recognized as a retirement plan under federal law. An EOT is a perpetual trust, in which employees may receive certain financial benefits and governance rights.

Cooperatives. Co-ops are member-owned business entities in which worker-owners have a controlling interest, and who elect the governing body on a one-member-one-vote basis.

**Summary of Bill (First Substitute):** Washington Employee Ownership Program. The Washington Employee Ownership Program (program) is created to support efforts of businesses considering sale to an employee ownership structure. The program is administered within the Department of Commerce (Commerce) and overseen by the Washington Employee Ownership Commission (Commission).

The program must offer technical support, and other services, to certain qualified businesses considering certain employee ownership structures. To receive program support, a business must be headquartered in Washington State. The program must also create an inventory of certain employee-owned businesses in this state.

Subject to the successful award of federal funding for this specific purpose, the program must establish a revolving loan program to assist existing small businesses in financing a transition to employee ownership. Certain requirements regarding who can receive the loan and what the loan may be used for are established.

Commerce must report to the Legislature on the program by December 1st each year on the number of employee-owned businesses and employee-owned trusts in the state and include recommendations for improvement and barriers for businesses considering employee ownership structures. The first report must include the rules and guidelines for the administration of the program, developed by the Commission.

Washington Employee Ownership Commission. The Commission is created to develop and supervise the program.

The Commission shall consist of the following eleven members:

- one member from each of the two major caucuses of the House of Representatives, appointed by the Speaker of the House;
- one member from each of the two major caucuses of the Senate, appointed by the President of the Senate; and
- seven of the following members appointed by the Governor:
  1. one representative of a small business using an employee ownership structure, with an initial four-year term;
  2. one representative of a large business using an employee ownership structure, with an initial four-year term;
  3. one representative of a statewide business association, with an initial two-year term;
  4. one economic development expert from the private sector with knowledge and experience in employee ownership, with an initial four-year term;
  5. one representative from a financial institution with expertise in transitions to employee ownership, with an initial two-year term;
  6. one economic development expert from the public sector, with an initial four-year term; and
  7. one representative from Commerce, with an initial four-year term.

The Commerce representative shall chair the first meeting, until a chair is elected. All gubernatorial appointments must first be nominated from recognized organizations that represent the entities or interests identified. After initial appointments, all members shall serve four-year terms and hold office until successors are appointed.

The Commission shall develop, in consultation with Commerce, the rules and guidelines for the administration of the program. Among other responsibilities related to assisting businesses considering employee ownership, the Commission must conduct market research for the purpose of applying to future federal funding.

Business and Occupations Tax Credit. Beginning July 1, 2024, a business and occupation tax credit for costs related to converting a qualifying business to an employee ownership structure is established. The total amount of credits may not exceed \$2 million per year and are available on a first-in-time basis. Unused credit may be carried over up to 12 months from the end of the tax reporting period in which the credit was earned.

Qualified businesses may receive up to:

- 50 percent of the conversion costs, not to exceed \$25,000, to a worker-owner cooperative or an employee ownership trust; or
- 50 percent of the conversion costs, not to exceed \$100,000, to an ESOP.

This bill includes a tax preference performance statement. The Legislature's specific public policy objective is to encourage business owners to create an employee ownership plan or employee ownership trust or convert to a worker-owner cooperative. If the review finds that the number of employee ownership structures has increased, then the Legislature intends for the Joint Legislative Audit and Review Committee to recommend extending the expiration date of the tax preference.

**EFFECT OF CHANGES MADE BY BUSINESS, FINANCIAL SERVICES, GAMING & TRADE COMMITTEE (First Substitute):**

- Requires the program to create an inventory of employee-owned businesses in the state that includes ESOPs, co-ops, and EOTs;
- Requires Commerce to include the number of employee-owned businesses and EOTs in their report to the Legislature.
- Amends the definition of an employee cooperative to also include co-ops covered under other state statutes as long as they have at least 50 percent of its board of directors consisting of, and elected by, its employees.
- Requires the Commission's economic development expert from the private sector to have knowledge and experience with employee ownership.
- Requires the Commission to conduct market research for the purpose of applying for future federal funding.
- Amends the definition of ESOP, under the business and occupation tax credit section, to have the same meaning as the definition under federal law as of the bill's effective date.
- Removes a section regarding funding availability from the federal government's state small business credit initiative funding.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** Yes.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Original Bill (Business, Financial Services, Gaming & Trade):** *The committee recommended a different version of the bill than what was heard.* PRO: Schweitzer Engineering is an employee-owned business and is one of the premier businesses in Washington State. There are many benefits to employee ownership. Many current business owners do not have a plan for when they transition out of the business, and employee ownership provides a valuable option. Employee ownership also helps retain good employees. Massachusetts, California, and Colorado have all passed legislation that create programs to support businesses as they transition to employee ownership. If a fraction of retiring business owners pursued employee ownership, the results

would be extraordinary. ESOPs allow wealth creation for employees and an exit strategy for business owners.

There are three issues in transitioning to employee ownership—lack of information, lack of capital, and lack of state level incentives and resources. This bill deals with all three of these issues. The commission and program are key first steps to help businesses become employee-owned. With the recent implementation of federal legislation supporting employee ownership, and the number of employees working for businesses who may retire, this bill will make a difference. This bill improves the LGBTQ plus community's ability to support each other and the greater community. Employee ownership helps distribute wealth and transforms lives by providing economic stability.

OTHER: The silver tsunami is undoubtedly affecting the businesses in Washington, and it threatens about 70,000 businesses and their 700,000 employees. The state can strengthen, rather than duplicate, current efforts already underway in the state. To improve the bill there should be data collection, as these businesses are hard to track, and a dedicated full-time position to support businesses transitioning to employee ownership. A Washington State Center for Employee Ownership should be created, and the full time position should be allocated there. WCF is well suited to help create this Center. Please consider whether the proposed activities would be best performed by non-governmental entities.

This last biennium Commerce was provided State Small Business Credit Initiative (SSBCI) funding from the United States Department of the Treasury, and those funds are currently allocated to specific programs. Though equity programs are an allowable use of those funds, per the Treasury's rules, Commerce has not been approved use of Washington's SSBCI funds for that purpose.

**Persons Testifying (Business, Financial Services, Gaming & Trade):** PRO: Senator Mike Padden, Prime Sponsor; Jack Moriarty, Ownership America; Steve Storkan, Employee Ownership Expansion Network; Mitchell Miller, GreatBanc Trust Company; Gabriel Neuman, GSBA.

OTHER: Keith Swenson, Washington State Department of Commerce; Mauri Ingram, Whatcom Community Foundation.

**Persons Signed In To Testify But Not Testifying (Business, Financial Services, Gaming & Trade):** No one.

**Staff Summary of Public Testimony (Ways & Means):** PRO: There are 61 ESOP companies throughout Washington. People are happier working for an ESOP and retire in a much better position because they are getting part of the company's profits. This bill will integrate employee ownership into Washington's broader economic development strategy. This is the only scalable and sustainable way to help rebuild the middle class, without reliance on government. ESOPs motivate employees, increase productivity, prioritize

keeping jobs local and contribute to business longevity, especially as small businesses continue to close due to the baby boomer retirement wave. This will promote greater financial inclusion and asset participation among communities, especially communities of color.

**Persons Testifying (Ways & Means):** PRO: Senator Mike Padden, Prime Sponsor; Jack Moriarty, Ownership America; Gellert Dornay; Bryan Ricker, Schweitzer Engineering Laboratories; Miles Nowlin, Northwest Cooperative Development Center; Licett Garbe, Greater Spokane Valley Chamber of Commerce; Brian Boland, Delta Fund; Mo Manklang, U.S. Federation of Worker Cooperatives; Mauri Ingram, Whatcom Community Foundation.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.