

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5096

68th Legislature
2023 Regular Session

Passed by the Senate April 19, 2023
Yeas 48 Nays 0

President of the Senate

Passed by the House April 17, 2023
Yeas 96 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5096** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5096

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By Senate Business, Financial Services, Gaming & Trade (originally sponsored by Senators Padden, Pedersen, Hasegawa, and Schoesler)

READ FIRST TIME 01/25/23.

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;

14 (vii) Create an inventory of employee-owned businesses in the
15 state including employee stock ownership plans, worker cooperatives,
16 and employee ownership trusts; and

17 (viii) Subject to the successful award of federal funding for
18 this purpose, establish a revolving loan program to assist existing
19 small businesses to finance a transition to employee ownership.

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

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

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

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

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

4 (i) Support capitalization of state revolving loan programs; and

5 (ii) Support businesses that seek to transition to employee
6 ownership.

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

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

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

21 (5) For the purposes of this section:

22 (a) "Employee-owned business" means:

23 (i) An employee cooperative established under chapter 23.78,
24 23.86, 23.100, or 24.06 RCW that has at least 50 percent of its board
25 of directors consisting of, and elected by, its employees; or

26 (ii) An entity owned in whole or in part by employee stock
27 ownership plans as defined in 26 U.S.C. Sec. 4975(e)(7).

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

35 (6) Program support shall only be made available to businesses
36 headquartered in Washington state. For the purposes of this section,
37 "headquartered in Washington state" means that Washington state is
38 its principal place of business or the state where it is
39 incorporated.

1 (7) The director shall adopt rules as necessary to implement this
2 section.

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

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

8 (2) The commission shall consist of:

9 (a) One member from each of the two major caucuses of the house
10 of representatives to be appointed by the speaker of the house and
11 one member from each of the two major caucuses of the senate to be
12 appointed by the president of the senate. The initial term shall be
13 two years; and

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

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

17 (A) One representative of a worker cooperative business. The
18 initial term shall be four years;

19 (B) One representative of an employee stock ownership plan
20 business. The initial term shall be four years;

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

23 (D) One economic development expert, from the private sector,
24 with employee ownership knowledge and experience. The initial term
25 shall be four years; and

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

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

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

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

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

38 (4) The commission shall be led by a chair selected and voted on
39 by members of the commission. The chair shall serve a one-year term

1 but may serve more than one term if selected to do so by members of
2 the commission.

3 (5) The commission shall develop, in consultation with the
4 director, rules and guidelines to administer the program. Rules and
5 guidelines for the administration of the program must be included in
6 the first report to the legislature required in section 2 of this
7 act.

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

15 (7) The commission shall conduct market research for the purposes
16 of, or to support, a future application to the federal government for
17 a program to assist in the purchase of an interest in an employee
18 stock ownership plan qualifying under section 401 of the internal
19 revenue code, worker cooperative, or related broad-based employee
20 ownership vehicle.

21 (8) For purposes of this section, a "professional organization"
22 includes an entity whose members are engaged in a particular lawful
23 vocation, occupation, or field of activity of a specialized nature
24 including, but not limited to, associations, boards, educational
25 institutions, and nonprofit organizations.

26 NEW SECTION. **Sec. 4.** (1) This section is the tax preference
27 performance statement for the tax preference contained in section 5,
28 chapter . . . , Laws of 2023 (section 5 of this act). This performance
29 statement is only intended to be used for subsequent evaluation of
30 the tax preference. It is not intended to create a private right of
31 action by any party or be used to determine eligibility for
32 preferential tax treatment.

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

36 (3) It is the legislature's specific public policy objective to
37 encourage business owners to create an employee stock ownership plan
38 or employee ownership trust, or to convert to a worker-owned

1 cooperative, that allows the company to share ownership with their
2 employees without requiring employees to invest their own money.

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

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

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

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

20 (2) The credit is equal to:

21 (a) Up to 50 percent of the conversion costs, not to exceed
22 \$25,000, incurred by a qualified business for converting the
23 qualified business to a worker-owned cooperative or an employee
24 ownership trust; or

25 (b) Up to 50 percent of the conversion costs, not to exceed
26 \$100,000, incurred by a qualified business for converting the
27 qualified business to an employee stock ownership plan.

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

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

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

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

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

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

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

8 (5) (a) The department may require persons claiming a credit under
9 this section to provide appropriate documentation, in a manner as
10 determined by the department, for the purposes of determining
11 eligibility under this section.

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

15 (6) For the purposes of this section:

16 (a) "Conversion costs" means professional services, including
17 accounting, legal, and business advisory services, as detailed in the
18 guidelines issued by the department, for: (i) A feasibility study or
19 other preliminary assessments regarding a transition of a business to
20 an employee stock ownership plan, a worker-owned cooperative, or an
21 employee ownership trust; or (ii) the transition of a business to an
22 employee stock ownership plan, a worker-owned cooperative, or an
23 employee ownership trust.

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

27 (c) "Employee stock ownership plan" has the same meaning as set
28 forth in 26 U.S.C. Sec. 4975(e)(7), as of the effective date of this
29 section.

30 (d) "Qualified business" means a person subject to tax under this
31 chapter, including but not limited to a C corporation, S corporation,
32 limited liability company, partnership, limited liability
33 partnership, sole proprietorship, or other similar pass-through
34 entity, that is not owned in whole or in part by an employee
35 ownership trust, that does not have an employee stock ownership plan,
36 or that is not, in whole or in part, a worker-owned cooperative, and
37 that is approved by the department for the tax credit in this
38 section.

39 (e) "Worker-owned cooperative" has the same meaning as set forth
40 in 26 U.S.C. Sec. 1042(c)(2), as of the effective date of this

1 section, or such subsequent dates as may be provided by rule by the
2 department, consistent with the purposes of this section.

3 (7) Credits allowed under this section can be earned for tax
4 reporting periods starting on or before June 30, 2029. No credits can
5 be claimed on returns filed for tax periods starting on or after July
6 1, 2030.

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

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

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

20 NEW SECTION. **Sec. 7.** Sections 4 and 5 of this act take effect
21 July 1, 2024.

22 NEW SECTION. **Sec. 8.** This act may be known and cited as the
23 expanding employee ownership act.

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