



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0361/2
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2017 SENATE BILL 460

October 18, 2017 - Introduced by Senators HANSEN, BEWLEY, CARPENTER, MILLER and RINGHAND, cosponsored by Representatives GENRICH, ANDERSON, BERCEAU, CROWLEY, OHNSTAD, SPREITZER, C. TAYLOR and VRUWINK. Referred to Committee on Economic Development, Commerce and Local Government.

1 **AN ACT** *to create* 16.75 (3r), 36.25 (54), 71.05 (6) (b) 53., 71.05 (6) (b) 54., 71.26
2 (1) (ab), 71.26 (2) (a) 13., 71.26 (2) (a) 14., 71.26 (2) (a) 15., 73.17 and 238.147
3 of the statutes; **relating to:** providing loans, loan guarantees, tax benefits, and
4 procurement preferences to employee-owned companies, establishing a center
5 for employee ownership in the University of Wisconsin System, and granting
6 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill requires the Board of Regents of the University of Wisconsin System to establish and maintain a center for employee ownership to provide education and outreach to inform business owners about the benefits of employee ownership successions, including providing initial consultations to business owners exploring the possibility of transferring full or partial ownership to employees. In addition, the bill requires the Wisconsin Economic Development Corporation to establish an economic development program to make employee ownership loans or loan guarantees to finance an eligible transaction. Under the bill, an “eligible transaction” is the transfer of shares of a corporation or member interests of a limited liability company to an employee stock ownership plan, an employee ownership trust, or a direct share ownership plan.

The bill also provides certain income and franchise tax benefits to an employee-owned business, such as excluding from taxation the income of an

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employee ownership trust. Under the bill, an employee ownership trust has the exclusive purposes of creating employee ownership by obtaining and holding shares or member interests of an employer and of promoting the financial and nonfinancial interests of all tenured employees. The bill defines “tenured employee” to mean any employee or independent contractor who has provided at least 1,000 hours of service to the employer within the immediately preceding 12-month period.

Finally, the bill provides that the Department of Administration must attempt to ensure that 5 percent of the total amount expended to procure tangible personal property and services is paid to businesses in which a certain percentage of the employer stock or membership interest is held by an employee stock ownership plan or employee ownership trust or held through a direct share ownership plan.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.75 (3r) of the statutes is created to read:

2 16.75 (3r) (a) In this subsection:

3 1. “Direct share ownership plan” has the meaning given in s. 73.17 (1) (a).

4 2. “Employee ownership trust” has the meaning given in s. 73.17 (1) (e).

5 3. “Employee stock ownership plan” has the meaning given in s. 73.17 (1) (f).

6 4. “Qualified transfer” has the meaning given in s. 73.17 (1) (h).

7 5. “Tenured employee” has the meaning given in s. 73.17 (1) (i).

8 (b) 1. The department, any agency to which the department delegates
9 purchasing authority under s. 16.71 (1), and any agency making purchases under s.
10 16.74 shall attempt to ensure that 5 percent of the total amount expended under this
11 subchapter in each fiscal year is paid to businesses that satisfy any of the following:

12 a. A percentage, as established by the department by rule, of employer stock
13 or membership interest, of the type required for a qualified transfer, is held by an
14 employee stock ownership plan or employee ownership trust.

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1 b. A percentage, as established by the department by rule, of employer stock
2 or membership interest, of the type required for a qualified transfer, is held through
3 a direct share ownership plan where the ownership stake of the direct share
4 ownership plan is calculated by determining the smallest amount of such stock or
5 membership interest held by a tenured employee, multiplied by the total number of
6 tenured employees.

7 c. A percentage, as established by the department by rule, of nonprofit
8 corporation membership, with voting power equal to or in excess of that class of
9 membership having the greatest voting power, is held by all tenured employees as
10 a class, and the tenured employees vote as members on a one person, one vote basis.

11 2. Except as provided under sub. (7), the department, any agency to which the
12 department delegates purchasing authority under s. 16.71 (1), and any agency
13 making purchases under s. 16.74 may purchase materials, supplies, equipment, and
14 contractual services from any business specified in subd. 1. a., b., or c. submitting a
15 qualified responsible competitive bid that is no more than 5 percent higher than the
16 apparent low bid or competitive proposal that is no more than 5 percent higher than
17 the most advantageous proposal. In administering the preference for businesses
18 specified in subd. 1. a., b., and c. established in this paragraph, the department, the
19 delegated agency, and any agency making purchases under s. 16.74 shall maximize
20 the use of businesses specified in subd. 1. a., b., and c. that are incorporated under
21 ch. 180 or that have their principal place of business in this state.

22 **SECTION 2.** 36.25 (54) of the statutes is created to read:

23 36.25 (54) CENTER FOR EMPLOYEE OWNERSHIP. (a) The board shall establish and
24 maintain a center for employee ownership at a location within the system
25 determined by the board.

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1 (b) The center for employee ownership shall do all of the following:

2 1. Provide education and outreach to inform business owners about the benefits
3 of employee ownership successions and the provisions of ss. 16.75 (3r) (b), 71.05 (6)
4 (b) 53. and 54., 71.26 (1) (ab) and (2) (a) 13., 14., and 15., 73.17, and 238.147.

5 2. Organize workshops and conferences on employee ownership successions.

6 3. Prepare and distribute materials concerning employee ownership
7 successions.

8 4. Provide initial consultations to business owners exploring the possibility of
9 transferring full or partial ownership to employees.

10 5. Provide a referral service to help business owners find legal, financial, and
11 technical advice in connection with employee ownership successions.

12 6. Partner with key organizations, such as professional and trade associations,
13 financial institutions, unions, economic development organizations, and other
14 nonprofit entities, to promote employee ownership successions.

15 7. Support the growth of associations of employee-owned companies.

16 (c) In addition to its responsibilities under par. (b), the center for employee
17 ownership shall do all of the following:

18 1. Provide access to information regarding government rules and regulations
19 that relate to employee ownership.

20 2. Develop, in partnership with appropriate state and local government
21 agencies, proposals for changes in policies to promote employee ownership.

22 3. Conduct investigations, research, studies, and analyses on the subject of
23 employee ownership.

24 **SECTION 3.** 71.05 (6) (b) 53. of the statutes is created to read:

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1 71.05 (6) (b) 53. For taxable years beginning after December 31, 2016, income,
2 including all gains not excluded from taxation under subd. 9., derived from a
3 qualified transfer, as defined in s. 73.17 (1) (h), except that the amount of income
4 derived from the qualified transfer to a direct share ownership plan, as defined in s.
5 73.17 (1) (a), that may be excluded under this subdivision may not exceed the amount
6 of income derived in the taxable year from the smallest amount of shares or member
7 interests transferred to a tenured employee, as defined in s. 73.17 (1) (i), multiplied
8 by the number of all tenured employees.

9 **SECTION 4.** 71.05 (6) (b) 54. of the statutes is created to read:

10 71.05 (6) (b) 54. For taxable years beginning after December 31, 2016, income
11 derived from shares or member interests distributed through a direct share
12 ownership plan, as defined in s. 73.17 (1) (a), except that the amount of the income
13 that may be excluded under this subdivision may not exceed the amount of income
14 derived in the taxable year from the smallest amount of shares or member interests
15 distributed to a tenured employee, as defined in s. 73.17 (1) (i).

16 **SECTION 5.** 71.26 (1) (ab) of the statutes is created to read:

17 71.26 (1) (ab) *Employee ownership trust.* Income of an employee ownership
18 trust, as defined in s. 73.17 (1) (e).

19 **SECTION 6.** 71.26 (2) (a) 13. of the statutes is created to read:

20 71.26 (2) (a) 13. For taxable years beginning after December 31, 2016, minus
21 the amount of the interest income derived from an employee ownership loan, as
22 defined in s. 73.17 (1) (d).

23 **SECTION 7.** 71.26 (2) (a) 14. of the statutes is created to read:

24 71.26 (2) (a) 14. a. For taxable years beginning after December 31, 2016, minus
25 the amount of contributions to an employee ownership trust, as defined in s. 73.17

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1 (1) (e), or to a direct share ownership plan, as defined in s. 73.17 (1) (a), including
2 contributions applied to repayment of principal and interest on an employee
3 ownership loan, as defined in s. 73.17 (1) (d).

4 b. The exclusion under subd. 14. a. is subject to the limits under section 404 (a)
5 (3) (A) of the Internal Revenue Code. The amount of the exclusion under subd. 14.
6 a. for contributions to a direct share ownership plan may not exceed the value in the
7 taxable year of the smallest amount of shares or member interests distributed to a
8 tenured employee, as defined in s. 73.17 (1) (i), multiplied by the number of all
9 tenured employees.

10 c. Contributions under this subdivision may be in cash, shares, or member
11 interests. For purposes of this subdivision, the taxpayer shall submit with the
12 taxpayer's return a copy of the findings of an independent appraiser regarding the
13 fair market value of shares or member interests.

14 **SECTION 8.** 71.26 (2) (a) 15. of the statutes is created to read:

15 71.26 (2) (a) 15. For taxable years beginning after December 31, 2016, minus
16 the amount of dividends payable to an employee ownership trust, as defined in s.
17 73.17 (1) (e), or to a direct share ownership plan, as defined in s. 73.17 (1) (a). The
18 amount of the exclusion under this subdivision for dividends payable to a direct
19 share ownership plan may not exceed an amount equal to the dividends payable to
20 the employee owning the fewest number of shares, multiplied by the number of all
21 tenured employees.

22 **SECTION 9.** 73.17 of the statutes is created to read:

23 **73.17 Employee ownership. (1) DEFINITIONS.** In this section:

24 (a) "Direct share ownership plan" means an arrangement in which a portion
25 of the highest class of voting shares of a corporation or voting interest of a member

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1 of a limited liability company is held directly by all tenured employees. The shares
2 or interest may be nontransferable and callable upon termination or retirement of
3 the employee.

4 (b) "Eligible transaction" means the qualified transfer of some or all of the
5 shares of a corporation or member interests of a limited liability company to an
6 employee stock ownership plan, employee ownership trust, or direct share
7 ownership plan. An eligible transaction includes an acquisition of shares or member
8 interests by an employee ownership association, as an intermediary, for the purpose
9 of a qualified transfer to an employee stock ownership plan, employee ownership
10 trust, or direct share ownership plan.

11 (c) "Employee ownership association" means a corporation, limited liability
12 company, trust, or other entity that acts on behalf of the employees of an existing
13 employer for the purpose of achieving the qualified transfer of some or all of the
14 shares or member interests of the employer to ownership by an employee stock
15 ownership plan, employee ownership trust, or direct share ownership plan. An
16 employee ownership association includes a corporation or limited liability company
17 with an existing employee stock ownership plan, employee ownership trust, or direct
18 share ownership plan that acts on behalf of the employees of another employer for
19 the purpose of achieving a qualified transfer by means of a consolidation or merger.

20 (d) "Employee ownership loan" means any of the following:

21 1. Any loan to a corporation, limited liability company, employee stock
22 ownership plan, employee ownership trust, or employee ownership association, to
23 the extent that the proceeds are used to acquire shares or member interests of an
24 employer for a qualified transfer.

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1 2. Any loan to a corporation or limited liability company to the extent that,
2 within 30 days, shares or member interests of an employer are transferred to an
3 employee stock ownership plan, employee ownership trust, or direct share
4 ownership plan in an amount equal to the loan and in accordance with the terms of
5 a qualified transfer.

6 (e) “Employee ownership trust” means a trust, including a foreign trust, that
7 holds the highest class of voting shares of a corporation or voting interest of a member
8 of a limited liability company and that meets the requirements under sub. (2) (a), and
9 may be a noncharitable trust, perpetual trust, or both.

10 (f) “Employee stock ownership plan” means an employee stock ownership plan,
11 as defined in section 4975 (e) (7) of the Internal Revenue Code.

12 (g) “Employer” includes 2 or more persons who are treated as a single employer
13 under section 414 (b), (c), (m), or (o) of the Internal Revenue Code.

14 (h) “Qualified transfer” means the transfer of any amount of shares of a
15 corporation or member interests of a limited liability company to an employee stock
16 ownership plan, employee ownership trust, or direct share ownership plan if all of
17 the following apply:

18 1. The shares or member interests have voting power equal to or in excess of
19 the class of common shares or member interests of the employer having the greatest
20 voting power.

21 2. The shares or member interests have dividend rights equal to or in excess
22 of the class of common shares or member interests of the employer having the
23 greatest dividend rights.

24 3. If the transfer is to a direct share ownership plan, the largest amount of
25 shares or member interests transferred to any employee does not exceed a multiple

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1 of 10 times the smallest amount of shares or member interests transferred to any
2 tenured employee.

3 (i) "Tenured employee" means any employee or independent contractor who has
4 provided at least 1,000 hours of services to the employer within the immediately
5 preceding 12-month period unless, with respect to an employee ownership trust or
6 a direct share ownership plan, a lower number of hours is established in the terms
7 of the employee ownership trust or direct share ownership plan.

8 **(2) EMPLOYEE OWNERSHIP TRUSTS.** (a) Sections 71.05 (6) (b) 53. and 54. and 71.26
9 (1) (ab) and (2) (a) 13., 14., and 15. apply to an employee ownership trust only if all
10 of the following apply:

11 1. a. Subject to subd. 1. b., c., d., and e., the employee ownership trust has the
12 exclusive purposes of creating employee ownership by obtaining and holding shares
13 or member interests of an employer and of promoting the financial and nonfinancial
14 interests of all tenured employees.

15 b. The exclusive purposes of an employee ownership trust may include
16 preserving the ability of all tenured employees to exercise the voting rights of the
17 trust on a one person, one vote basis. This subd. 1. b. does not exempt the trustee
18 from an obligation to carry out the express terms and purpose of the trust in the case
19 of a conflict with the majority decision of all tenured employees.

20 c. The exclusive purposes of an employee ownership trust may include holding
21 shares or member interests of an employer in perpetuity and preserving the
22 employer in perpetuity.

23 d. The exclusive purposes of an employee ownership trust may refer to both
24 current and prospective tenured employees.

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1 e. An employee ownership trust may prioritize certain exclusive purposes over
2 others.

3 2. No principal or income of the employee ownership trust is distributed or
4 allocated to any party other than a tenured employee, except that principal and
5 income of the trust may be distributed to one or more charitable organizations. The
6 employee ownership trust may distribute principal to current and past tenured
7 employees if the trust sells shares or member interests of the employer by
8 establishing a cutoff date for the inclusion of past tenured employees.

9 3. Principal and income of the employee ownership trust that is distributed or
10 allocated to employees is administered proportionally to all tenured employees on
11 the basis of hours worked, salary, seniority, or any combination of these factors.

12 (b) 1. An employee ownership trust may limit trustee liability in a manner
13 authorized under subch. X of ch. 701 if the shares or member interests of the
14 employer are voted by the trustee in accordance with the direction of all tenured
15 employees and on a one person, one vote basis and all of the following apply:

16 a. The trustee votes all employer shares or member interests as a unit in
17 accordance with the majority decision of all tenured employees.

18 b. Before voting, the trustee furnishes each tenured employee with the
19 information statement and other materials provided to shareholders or members in
20 connection with the shareholder or member meeting, together with a form on which
21 confidential voting directions may be given to the trustee or, if the trustee is not
22 independent of the employer, to an independent 3rd party designated by the trustee,
23 who tabulates votes and provides instructions to the trustee. The trustee or a 3rd
24 party may not disclose the confidential voting directions of any tenured employee to
25 the employer.

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1 2. This paragraph does not exempt the trustee from an obligation to carry out
2 the express terms and purpose of the trust in the case of a conflict with the majority
3 decision of all tenured employees.

4 (c) An employee ownership trust is not disqualified from any benefit available
5 under s. 71.05 (6) (b) 53. or 54. or 71.26 (1) (ab) or (2) (a) 13., 14., or 15. solely because
6 the terms of the trust do any of the following:

7 1. Authorize the trustee to employ an entity, such as a corporation, a limited
8 liability company, or another trust, to hold the shares or member interests of the
9 employer.

10 2. Require that the employer obtain membership in one or more nonprofit
11 associations.

12 3. Require that the employer pay market rate wages or benefits or both.

13 4. Require that the employer retain a percentage of annual net income as
14 permanent reserves that will never be distributed to employees.

15 5. Impose other requirements to promote the long-term financial health of the
16 employer and the continued ability of the employer to provide high-quality jobs
17 under conditions of employee ownership to all current and prospective tenured
18 employees.

19 6. Appoint a trust protector or cotrustee or both to enforce the trust and approve
20 amendments to the trust.

21 **SECTION 10.** 238.147 of the statutes is created to read:

22 **238.147 Employee ownership loans and loan guarantees. (1)**

23 DEFINITIONS. In this section:

24 (a) "Eligible transaction" has the meaning given in s. 73.17 (1) (b).

25 (b) "Employee ownership association" has the meaning given in s. 73.17 (1) (c).

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1 (c) "Employee ownership loan" has the meaning given in s. 73.17 (1) (d).

2 (d) "Total cost" means all reasonable and necessary costs to be incurred in the
3 course of an eligible transaction, including the fair market value of the business
4 interest to be acquired, as well as costs for any additional construction, land
5 acquisition, improvements, equipment, pertinent rights and easements, and
6 associated technical, engineering, legal, and financial services.

7 **(2) ESTABLISHMENT OF PROGRAM.** The corporation shall establish and administer
8 an economic development program under this section to make employee ownership
9 loans and employee ownership loan guarantees to eligible applicants.

10 **(3) APPLICATION.** Any corporation, limited liability company, trust, or employee
11 ownership association may apply to the corporation for an employee ownership loan
12 or employee ownership loan guarantee or both to finance an eligible transaction.

13 **(4) LOANS AND LOAN GUARANTEES.** The corporation may contract with an
14 applicant under sub. (3) to do any of the following:

15 (a) Make an employee ownership loan to the applicant equal to up to 40 percent
16 of the total cost. At least 50 percent of a loan made under this paragraph shall be
17 senior debt.

18 (b) Guarantee up to 100 percent of employee ownership loans made to the
19 applicant by lenders other than the corporation. All loan guarantees made to an
20 applicant under this paragraph may not exceed 80 percent of the total cost.

21 **(5) TIMELINESS.** The corporation shall make a loan decision or a loan guarantee
22 decision under sub. (4), and inform the applicant of the corporation's decision, no
23 later than 30 days after the corporation receives the applicant's application for an
24 employee ownership loan or employee ownership loan guarantee under sub. (3). If
25 the corporation requests that an applicant supplement its application by submitting

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1 additional information, the corporation shall have an additional 15 days after
2 receiving the additional information by which the corporation must make a loan
3 decision or a loan guarantee decision under sub. (4) and inform the applicant of the
4 corporation's decision.

5 **SECTION 11. Nonstatutory provisions.**

6 (1) CENTER FOR EMPLOYEE OWNERSHIP. The Board of Regents of the University
7 of Wisconsin System shall establish the center for employee ownership under section
8 36.25 (54) of the statutes no later than 180 days after the effective date of this
9 subsection.

10 (END)