

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 820
Finance

(Senator Harrington)

Employee Opportunity to Purchase Act

This bill requires a business entity located in the State to give its employees the right to purchase the entity, or its facilities and capital equipment, prior to the sale, closure, or relocation of the business out of State. The bill also requires the Department of Business and Economic Development (DBED), in consultation with the Department of Labor, Licensing, and Regulation (DLLR) and other appropriate stakeholders, to establish regulations to implement the bill.

The bill takes effect October 1, 2010, except the regulation provisions, which take effect July 1, 2009.

Fiscal Summary

State Effect: Potential significant increase in general or special fund expenditures beginning in FY 2011, as the bill requires DBED to perform feasibility and market studies and to provide credit enhancement and gap financing in certain instances. The frequency, complexity, and potential costs of the bill's requirements cannot be accurately determined.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill applies to all businesses that are not microenterprises, meaning they have more than five employees, market capitalization greater than \$25,000, and net

worth exceeding \$100,000. If a business entity organized under the laws of the State and located within the State is sold, closed, or relocated outside the State, the business must give its employees an option to purchase the entire business.

Alternatively, if a business located in the State, but organized under a different jurisdiction's laws, is sold, closed, or relocated outside the State, the business must give its employees the option to purchase the facilities and capital equipment of the business location in Maryland.

The business entity's asking price in an offer of sale to its employees may not exceed the reasonable market price of the entity or a third party's purchase offer. A business entity's offer to sell its employees the business, or the business's facilities and capital equipment, must include:

- the asking price and material terms of the sale;
- a statement as to whether a third-party contract exists;
- a statement that the business entity's owners will make documents available to the employees in the event of a sale; and
- any other statements required under regulations established by DBED.

Upon receiving a business entity's offer of sale, the business's employees have 60 days to respond with a purchase offer. The employees may only accept the offer through an employee stock ownership plan (ESOP) that includes democratic participatory governance mechanisms for the business entity.

If DBED receives a petition from at least 10% of the business's employees, DBED is required to conduct a feasibility and market study on the employees' behalf. If the feasibility and market study is favorable to the employees, DBED must conduct an election among the business's employees. In order to make a purchase offer for the business, or a purchase offer for the facilities and capital equipment of the in-state business location, 58% of eligible employees must vote in favor of either purchase. If at least 58% of eligible employees elect to make a purchase offer, the State must provide credit enhancement and gap financing to supplement a bank loan toward the purchase.

A third party's right to purchase a business entity operating in the State is conditional upon the business entity's employees exercising their rights under the bill.

Finally, DBED, in consultation with DLLR and other appropriate stakeholders, must adopt regulations to implement the provisions of the bill, including:

- the appropriate form of notice of offers of sale, and additional statements that should be included in the notice;
- the appropriate sources of credit enhancement and gap financing for employees who elect to purchase businesses; and
- an outreach and marketing plan to notify businesses, employees, and other affected stakeholders of their rights and responsibilities.

Current Law: The Broadened Ownership Act declares the public policy view of the General Assembly that an ESOP, as defined by the Internal Revenue Code, makes an important contribution toward the broadening of capital ownership, increases the income and financial security of the residents of the State, assures the residents of the State greater control of their economic futures, improves productivity and labor-management relations, contributes to the national effort to combat inflation, strengthens the free enterprise system, and puts Maryland in the forefront of contemporary economic trends.

The Maryland Securities Act exempts certain transactions related to ESOPs from registration and filing requirements, including the sale of securities to an ESOP, the accrual of interests of participants in ESOP, and any distribution made under ESOP to participants or beneficiaries.

Background: According to the National Center for Employee Ownership, approximately 11,000 companies utilize an ESOP covering over 8 million employees. An ESOP may be used as a vehicle to allow employees to buy the shares of a departing owner. An ESOP is essentially an employee benefit plan, where a company establishes a trust fund that accepts tax-deductible contributions of a company's stock. The trust then distributes shares to individual employee accounts. When employees leave the company, they receive their stock, which the company must repurchase from them for the stock's fair market value. Publix Super Markets Inc., with 911 stores in five states, is the nation's largest ESOP and is owned by its 142,000 employees.

DBED administers several primary business assistance programs. These programs provide resources upon which the Division of Economic Development draws when assembling incentives to help a business expand or locate in Maryland. The five main assistance programs in the operating budget include the Maryland Economic Development Assistance Authority and Fund, the Maryland Small Business Development Financing Authority, the Maryland Enterprise Investment Fund, the Maryland Economic Adjustment Fund, and the Economic Development Opportunities Fund. DBED's business assistance also includes investments, loans, grants, conditional loans and grants, and tax credits.

Small Business Effect: To the extent that a small business must offer its employees a first right of refusal prior to the sale of the business or the business's assets, a business may incur substantial costs in establishing an ESOP for the benefit of its employees.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): National Center for Employee Ownership; *Tampa Bay Business Journal*; Department of Business and Economic Development; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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Analysis by: Jason F. Weintraub

Direct Inquiries to:
(410) 946-5510
(301) 970-5510