

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2013 Iowa Code section 15.106A and of 2013 Iowa Acts, House File 648, section 9, the Economic Development Authority hereby gives Notice of Intended Action to adopt new Chapter 56, “Employee Stock Ownership Plan (ESOP) Formation Assistance,” Iowa Administrative Code.

In 2013 Iowa Acts, House File 648, the General Assembly appropriated \$500,000 to the Authority for purposes of providing financial assistance in the formation of employee stock ownership plans (ESOPs). The proposed rules establish a program to provide such assistance and describe the manner in which the Authority intends to implement and administer the program.

The Economic Development Authority Board approved this amendment on August 16, 2013, at the Board’s monthly meeting.

Any interested person may make written suggestions or comments on this proposed amendment on or before October 8, 2013. Paper materials with suggestions and comments may be directed to Timothy J. Whipple, Legal Counsel, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Electronic submissions may be sent to tim.whipple@iowa.gov.

After analysis and review of this rule making, no negative impact on jobs has been found, and the Authority finds that the new program is likely to substantially benefit the Iowa economy by helping retain businesses in Iowa and by transferring the wealth-producing capacity of an ESOP to its employee owners.

These rules are intended to implement 2013 Iowa Acts, House File 648.

The following amendment is proposed.

Adopt the following new 261—Chapter 56:

CHAPTER 56

EMPLOYEE STOCK OWNERSHIP PLAN (ESOP) FORMATION ASSISTANCE

261—56.1(85GA,HF648) Purpose. The authority is authorized to provide financial and technical assistance to businesses interested in establishing an employee stock ownership plan (ESOP). The purpose of this chapter is to create a program that will assist a business by (1) helping to determine whether an ESOP is a feasible form of ownership and (2) providing assistance to reduce the cost of forming an ESOP when it is feasible.

261—56.2(85GA,HF648) Definitions. For purposes of this chapter unless the context otherwise requires:

“*Agreement*” means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

“*Applicant*” means a business applying for assistance under the program.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Board*” means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Business*” means a corporation eligible to become a qualified Iowa ESOP.

“*Director*” means the director of the authority.

“*Financial assistance*” means a payment made by the authority to an applicant approved for funding under the program.

“*Program*” means the ESOP formation assistance program established pursuant to this chapter.

“*Qualified Iowa ESOP*” means the same as defined in the department of revenue’s rules for the determination of net income at 701—subrule 40.38(10).

261—56.3(85GA, HF648) Program description.

56.3(1) Amount, form, and timing of assistance. The program provides financial assistance to businesses interested in establishing an ESOP. An applicant to the program may be approved for financial assistance in an amount equal to 50 percent of the cost incurred for obtaining a feasibility study conducted by an independent financial professional. The total amount of financial assistance provided to an applicant will not exceed \$25,000. The financial assistance may be provided in two tranches. The first tranche will be provided as a reimbursement of 25 percent of the cost of a feasibility study and will be remitted upon completion of the feasibility study. The second tranche will be provided as a reimbursement of 25 percent of the cost of the feasibility study and will be remitted only upon completion of an ESOP formation. A business that does not successfully complete the formation of an ESOP will not receive the second tranche. A business will be required to provide to the authority documentation establishing the costs incurred and the successful completion of all necessary transactions.

56.3(2) Application.

a. Each fiscal year in which funding is available, the authority will accept applications for assistance under the program and make funding decisions on a rolling basis.

b. Information on submitting an application under the program may be obtained by contacting the economic development authority. The contact information is:

Iowa Economic Development Authority
Office of General Counsel
200 East Grand Avenue
Des Moines, Iowa 50309
(515)725-3000
businessfinance@iowa.gov
<http://iowaeconomicdevelopment.com/>

56.3(3) Approval of assistance. The authority, with the assistance of an ESOP advisory panel, will consider, evaluate, and recommend applications for financial assistance under the program. The ESOP advisory panel will consist of individuals selected by the director who have demonstrated expertise in the formation and operation of ESOPs. Authority staff and the members of the advisory panel will review applications for financial assistance and score the applications according to the criteria described in rule 261—56.4(85GA, HF648). Applications deemed to meet the minimum scoring criteria will be submitted to the director for a final funding decision.

56.3(4) Contract required. If the director approves an applicant for financial assistance under the program, the authority will prepare an agreement stating the terms on which the financial assistance is to be provided, and the applicant shall execute the agreement before funds are disbursed under the program.

56.3(5) Use of funds. An applicant shall use funds provided only for the purpose of reducing the cost of forming an ESOP. The authority may require documentation or other information establishing the actual costs incurred for such formation. The financial assistance shall be provided to the applicant after the costs are incurred and on a reimbursement basis.

261—56.4(85GA, HF648) Program eligibility, application scoring, and funding decisions.

56.4(1) Program eligibility. To be eligible under the program, an applicant shall meet all of the following requirements:

a. The applicant shall be a business interested in establishing an ESOP. To establish that this criterion is met, the applicant shall state the reasons for its interest in establishing an ESOP.

b. The applicant shall be, or be willing to become, an IRS subchapter C or subchapter S corporation. To establish that this criterion is met, the applicant shall include a copy of its articles and documentation establishing the applicable IRS election. An applicant not yet a corporation may be required to execute a letter of intent.

c. The applicant shall have a valuation that is sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide information estimating the value of the business. This information may be a good-faith estimate. The authority will not set a specific minimum valuation; however, applicants are advised that a business with valuation less than \$5 million may not be considered a feasible candidate for an ESOP.

d. The applicant shall have a number of employees and a total payroll that are sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide relevant payroll information. The authority will not set a specific minimum number of employees; however, applicants are advised that a business with fewer than 25 employees may not be a feasible candidate for an ESOP.

e. The applicant shall have a cash flow level sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide relevant financial statements. The authority will not set a minimum cash flow level; however, applicants are advised that a business with cash flow less than \$500,000 may not be a feasible candidate for an ESOP.

f. The applicant is not a retail business.

g. The applicant is not a publicly traded company.

h. The applicant has not completed a feasibility study for purposes of exploring an ESOP formation.

i. The applicant has not engaged a feasibility service provider prior to July 1, 2013. An applicant who has engaged a service provider as of the time of application shall provide a copy of the engagement letter to the authority.

56.4(2) Application scoring. A business meeting the requirements of subrule 56.4(1) may apply to the authority for financial assistance under the program. The authority will review applications for completeness and engage an ESOP advisory panel for assistance in evaluating the applications. As part of the evaluation process, an applicant will be required to interview with authority staff and with members of the ESOP advisory panel about the applicant's business, future plans, and interest in forming an ESOP. Authority staff and members of the ESOP advisory panel will evaluate the applications and give them an average numerical score between 0 and 100. The numerical score will reflect the extent to which an applicant is a feasible candidate for an ESOP. In determining the numerical score, the authority and the members of the advisory panel will take into account the extent to which each applicant meets the requirements of subrule 56.4(1). The authority will keep records of the scoring process and make those records available to applicants.

56.4(3) Funding decisions. Each application, including its numerical score, will be referred to the director with a recommended funding decision. The director will make the final funding decision on each application, taking into consideration the score and the funding recommendation of the ESOP advisory panel. The director may not approve funding for an application that receives an average score of less than 50 points.

261—56.5(85GA,HF648) Contract required. Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority. The agreement shall establish the terms on which the financial assistance is to be provided.

These rules are intended to implement 2013 Iowa Acts, House File 648, section 9.