



## **SUPPORT DPC ESOP EXPANSION**

### **S.3771A(Valesky) /A.3460A(Lupardo)**

#### **Background:**

In 2012, New York State passed legislation allowing the creation of a new corporate form called the Design Professional Corporation (DPC.) In a DPC, engineers, architects, land surveyors, landscape architects and geologists may join together to form a company to practice these professional disciplines. A Design Professional Corporation also has the unique feature of allowing employees who are not licensed professionals to have a beneficial interest in the firm through participation in an Employee Stock Ownership Plan. Currently, the combined interest of employees who are not licensed professionals and an Employee Stock Ownership Plan may not exceed 24.9% of the company's outstanding shares.

#### **Proposed Update:**

S.3771A(Valesky) / A.3460A(Lupardo) would, under certain circumstances, remove the 24.9% ownership ceiling on the Employee Stock Ownership Plan, allowing a Design Professional Corporation's ESOP to own greater than 24.9% of the firm.

The main element of this proposed change is that the firm will still be controlled by a minimum of 75% licensed professionals. While the ESOP would now be able to own more than 25% and as much as 100% of the company, the operational control and all professional decision making of the firm would be vested in licensed professionals just like in current law. The President, CEO and Chairperson of the Board, as well as at least 75% of the firm's officers and directors would remain licensed engineers, architects, land surveyors, landscape architects or geologists.

The second key element of this proposal is that the ESOP participant employees do not directly own shares in the firm but rather own beneficial interests in the ESOP trust that is the legal owner of the firm's shares. Regardless of the ESOP's composition of licensed and non-licensed employees, the parties that control the ESOP (i.e., the trustee(s) and plan committee member(s)) would each be made up of at least 75% licensed professionals and the control of the ESOP would remain in the hands of licensed professionals.

Under the provisions of this bill, the mix or licensure status of the employees participating in the ESOP would not affect the requirement that all professional and design decisions must still be made by licensed professionals and there is no opportunity for "corporate" or outside ownership or control. This legislation does not seek to introduce a new form of ownership, but is entirely consistent with concepts already in state law.

#### **Benefits:**

This legislation allows firms to share successes with and reward employees at all levels, not just founders, senior management, or partners. It will help smaller (including DMWBE firms) with growth and expansion. It helps retain and attract top-tier talent in New York State. Engineering

firms in all border areas risk losing talented employees to employers in New England, New Jersey and Pennsylvania, where greater degrees of non-licensed ownership are allowed. Additionally, there are over 100 currently existing firms practicing engineering that were formed prior to 1935, when the law regulating their ownership came into effect. A number of these “grandfathered” firms are currently majority- or even 100% owned by an ESOP.

The bill’s benefits go beyond facilitating business success but have social and community impacts too. As the current owners of local engineering firms seek to retire, the current younger employees and prospective future owners will have an easier path to transition. Without this ability, firms often are forced to merge or be acquired by larger national engineering firms often resulting in the loss of jobs as main office operations are eliminated. Facilitating greater ESOP ownership assists with succession planning and keeps firms locally owned and employee operated.

This bill is a common-sense measure that maintains the public safety concerns of the state while providing additional flexibility to the operation of the business and we urge its passage.