ACEC New York

American Council of Engineering Companies of New York

SUPPORT: DPC ESOP EXPANSION

S.2709(Kennedy) /A.3514(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. This legislation also states that if a firm's Employee Stock Ownership Plan (ESOP) qualifies under certain criteria (greater than 75% of the ESOP's trustees and plan committee members are licensed design professionals) it can be the largest shareholder and own up to 24.9% of the firm.

Proposed Update:
S.2709 (Kennedy) / A.3514 (Lupardo) would allow a Design Professional Corporation's qualifying ESOP to own greater than 24.9% of the firm. A qualifying ESOP is one where at least 75% of the ESOP's trustees and plan committee members are licensed design professionals.

Control: Key to this proposal is that the firm will still be *controlled* by licensed professionals. There would be no change to the existing law requiring that the firm's President, CEO and Chairperson of the Board, as well as at least 75% of the firm's officers and directors must be licensed professionals (engineers, architects, land surveyors, landscape architects or geologists.) All professional decision making of the firm would remain in the hands of licensed professionals.

Ownership: This bill **maintains** the 24.9% cap on direct ownership of firm shares by unlicensed individuals, who must be employees of the firm (i.e., no individuals who are not licensed professionals may own shares unless they are employees of the firm). Employees participating in the qualifying ESOP do not directly own shares in the firm but rather own beneficial interests in the ESOP trust. The qualifying, design professional-controlled ESOP is the legal owner of the firm's shares. If a firm's ESOP does not have at least 75% of its trustees and plan committee members as licensed design professionals, it is not a qualifying ESOP and would not be eligible to exceed the current law's 24.9% cap.

Ultimately, this bill would allow a qualifying, design professional-controlled ESOP to own a greater proportion of the company, while maintaining the current law's restrictions on unlicensed individuals' ownership and preserving the requirements that the firm's controlling management positions be filled predominantly by licensed design professionals.

Benefits: This bill helps locally-owned firms stay locally-owned and managed by providing a desirable succession planning and transition option. Expanded ESOP ownership allows the ESOP, for the benefit of the employees of the firm, to purchase the shares of the current owners. This allows the owners to receive fair market valuation for their stakes without having to resort to selling to larger or out-of-state firms which can often lead to 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 legislation also brings parity between DPC firms and so-called Grandfather firms (engineering firms operating under Education Law §7209(6)), many of which are majority- or 100% ESOP owned. It also offers social benefits by allowing firms to share financial successes with and reward employees at all levels, not just founders, senior management, or partners. It allows employees who are instrumental in the growth and success of the firm to reap the full rewards of their efforts, beyond standard salary compensation.

It helps attract and retain top-tier talent at New York's professional design firms which risk losing talented employees to similar professional firms in New England, New Jersey and Pennsylvania, where allowable employee ownership opportunities are considerably more expansive.

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 ACEC New York urges its passage.