
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2295

Session of
1984

INTRODUCED BY MANDERINO, RYAN, SWEET, PITTS, PETRARCA,
MICHLOVIC, CLYMER, COWELL, A. C. FOSTER, JR., PIEVSKY,
PETERSON, HOFFEL, BOOK, LLOYD, DeVERTER, AFFLERBACH, GRUPPO,
FREEMAN, GRIECO, ITKIN, GANNON, DOMBROWSKI, D. R. WRIGHT,
DALEY, STEIGHNER, HALUSKA, FATTAH, COHEN, JOHNSON, CESSAR,
WAMBACH, GALLAGHER, McHALE, DEAL, RUDY, COY, SALOOM, HAYES,
TELEK, WARGO, D. W. SNYDER, BELFANTI, SERAFINI, STUBAN,
GEORGE, WOGAN, WACHOB, DAVIES, FEE, MURPHY, DeLUCA, STAIRS,
CALTAGIRONE, RYBAK, PISTELLA, KUKOVICH, SHOWERS, PRESTON,
BALDWIN, CORDISCO, CAPPABIANCA, McCALL, REINARD, BATTISTO,
RAPPAPORT, OLIVER, SEVENTY, CLARK, DUFFY, MRKONIC, SWEET,
GAMBLE, RICHARDSON, MAYERNIK, STEWART, IRVIS, KASUNIC AND
PRATT, JUNE 13, 1984

AS AMENDED ON SECOND CONSIDERATION, IN SENATE, JUNE 26, 1984

AN ACT

1 Providing technical and financial assistance to employee-
2 ownership groups that seek to retain or preserve jobs by
3 restructuring an existing business into an employee-owned
4 enterprise with a substantial prospect of future recovery;
5 providing technical assistance on employee-ownership to
6 existing firms and current employee-owned enterprises in
7 Pennsylvania; and making appropriations.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Employee-
12 Ownership Assistance Program.

13 Section 2. Definitions.

14 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Department." The Department of Commerce.

4 "Employee-owned enterprise." A business which either:

5 (1) meets all of the following conditions:

6 (i) is organized as:

7 (A) a worker cooperative, within the meaning of
8 Subchapter T of the Internal Revenue Code of 1954, as
9 amended; or

10 (B) a corporation in which the employees own the
11 stock of the corporation through an Employee Stock
12 Ownership Plan, within the meaning of section
13 4975(e)(7) of the Internal Revenue Code of 1954, as
14 amended;

15 (ii) a majority of the voting rights are held by
16 employees and all employees who have stock allocated to
17 them are entitled to vote; shares are voted in such a
18 manner that the vote of the majority of the employees
19 controls the vote of the majority of shares; voting
20 rights on corporate matters for shares held in a trust
21 for the employees shall pass through to those employees,
22 at least to the extent required by the pass through
23 voting requirements of section 409A(e) of the Internal
24 Revenue Code of 1954, as amended;

25 (iii) the majority of the members of the board of
26 directors are elected by the employees; or

27 (2) is organized in a manner determined by the secretary
28 to involve substantial employees participation.

29 "Employee-ownership group." A corporation or other entity,
30 including labor unions, formed by or on behalf of the current or

1 former employees of an industrial or commercial firm or facility
2 located in this Commonwealth for the purpose of assuming
3 ownership or control of the firm or facility and operating it as
4 an employee-owned enterprise.

5 "Local administrative agency." An organization which enters
6 into a written agreement with the department to administer
7 technical and financial assistance pursuant to this act,
8 including a municipality, a county, a local development district
9 of the Appalachian Regional Commission, an industrial
10 development corporation organized and existing under the act of
11 May 17, 1956 (P.L.1609, No.537), known as the Pennsylvania
12 Industrial Development Authority Act, or any other nonprofit
13 economic development organization designated by the secretary.

14 "Secretary." The Secretary of Commerce.

15 Section 3. Employee Ownership Program.

16 The department will establish a technical and financial
17 assistance program to promote the development of employee-owned
18 enterprises.

19 Section 4. Technical assistance.

20 (a) Authorization to advance funds.--The department is
21 authorized to advance funds to local administrative agencies for
22 the purpose of providing loans to employee-ownership groups in
23 industrial and commercial enterprises as defined in section 3 of
24 the act of August 23, 1967 (P.L.251, No.102), known as the
25 Industrial and Commercial Development Authority Law, for
26 technical assistance to develop or improve an employee-owned
27 enterprise.

28 (b) Eligibility.--Employee-ownership groups shall be
29 eligible for assistance if the employees in the employee-
30 ownership group are employed by, formerly employed by or

1 affiliated with one of the following:

2 (1) Existing firms facing a threat of substantial
3 layoffs or a plant closing and investigating a reorganization
4 of all or some portion of the firm's business activity, at
5 sites located within this Commonwealth, as an employee-owned
6 enterprise. For purposes of this section "existing firm"
7 shall include an ongoing concern, the assets of an existing
8 company or the assets of a company which has been closed for
9 no more than one year as of the date of application for the
10 feasibility study loan.

11 (2) Existing firms, not necessarily facing a threat of
12 substantial layoffs or a plant closing, but considering a
13 conversion to an employee-owned enterprise and seeking
14 professional services to accomplish this, if conversion to
15 employee ownership will create net new jobs or retain
16 existing jobs at sites within this Commonwealth.

17 (3) Existing firms which currently have some form of
18 employee ownership and require professional services to
19 insure success of the employee-owned enterprise in its effort
20 to create net new jobs or retain existing jobs at sites
21 within this Commonwealth.

22 (c) Uses.--Loans will be made to employee-ownership groups
23 for the following purposes:

24 (1) Feasibility studies to investigate a reorganization
25 or new incorporation as an employee-owned enterprise. At a
26 minimum, the feasibility study should:

27 (i) Assess the market value and demand for the
28 product produced by the plant affected by the closing or
29 layoff.

30 (ii) Assess the market value and demand for other

1 products which could be manufactured or assembled at the
2 plant affected by the closing or layoff.

3 (iii) Evaluate the production costs incurred if the
4 plant were to be operated by the employee-ownership
5 group.

6 (iv) Determine whether there exists in the affected
7 area and in the employee-ownership group, the desire and
8 capacity to create a new production entity and to become
9 competitive.

10 (2) Professional services to implement a feasibility
11 study and other professional services to develop or insure
12 the success of an employee-owned enterprise.

13 (d) Repayment.--Loans provided for feasibility studies and
14 other professional services to employee-ownership groups to
15 investigate a conversion to an employee-owned enterprise are
16 subject to the following repayment conditions:

17 (1) If the enterprise studied is purchased or improved
18 by the employee group, the employee group shall repay the
19 entire amount of the loan, with interest, in a lump sum at
20 the closing of the purchase of the company or within one year
21 after the date of the release of the loan by the department,
22 whichever occurs later.

23 (2) If the enterprise studied is not purchased by the
24 employee group within one year after the completion of the
25 feasibility study, the applicant shall submit a final report
26 concerning the feasibility of repaying the loan.

27 (e) Other conditions.--

28 (1) The applicant shall provide evidence that there is a
29 prospect for recovery and future job growth or job retention
30 in applications under section 4(b)(1) or a substantial

1 prospect of job growth or job retention in applications under
2 section 4(b)(2) and (3).

3 (2) Maximum State participation is 50% of the total cost
4 of the technical assistance and the maximum loan size is
5 \$100,000.

6 ~~(3) The department may develop additional rules,~~ <—
7 ~~procedures, forms and guidelines to implement the technical~~
8 ~~assistance program, including, but not limited to, provisions~~
9 ~~for the terms, conditions and evaluation criteria for the~~
10 ~~loans.~~

11 Section 5. Financial assistance.

12 (a) Authorization to advance funds.--The department is
13 authorized to advance funds to local administrative agencies for
14 the purpose of providing loans and loan guarantees to employee-
15 owned enterprises reorganizing industrial, manufacturing and
16 agricultural enterprises as defined in section 3 of the act of
17 May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania
18 Industrial Development Authority Act, for the development of
19 employee-owned enterprises.

20 (b) Eligibility.--Eligibility for this assistance shall be
21 limited to employee-ownership groups reorganizing an existing
22 enterprise which is facing a threat of substantial layoffs or a
23 plant closing, where adequate private financing is not
24 available. For purposes of this subsection "existing enterprise"
25 shall include an ongoing concern, the assets of an existing
26 company or the assets of a company which has been closed for no
27 more than one year as of the date of completion of a feasibility
28 study.

29 (c) Uses.--Eligible project costs shall include land and
30 buildings, machinery and equipment and working capital secured

1 by accounts receivable and inventory.

2 (d) Debt instruments.--The financial subsidy provided should
3 be the minimum necessary to accommodate the borrower's financial
4 needs. Debt instruments shall include either or both of the
5 following:

6 (1) Loans, including deferred interest and principal
7 payments.

8 (2) Loan guarantees.

9 (e) Security.--Funds loaned shall be secured by lien
10 positions on collateral at the highest level of priority which
11 can accommodate the borrower's ability to raise sufficient debt
12 and equity capital. When the obligation of a firm is guaranteed,
13 the financial institution holding the obligation shall be
14 required to adequately secure the obligation.

15 (f) Loan limits.--The maximum loan or guarantee is
16 \$1,500,000 per firm. Loan funds shall not exceed 25% of the
17 total project costs and guarantees shall not exceed 25% of the
18 total loan value. The term of the loan shall be the shortest
19 consistent with the needs of the firm, but no longer than 20
20 years. The interest rate on loans will be at or above the
21 interest rate on the bonds issued to fund this act.

22 (g) Equity requirement.--A significant equity investment by
23 the employee-ownership group equal to at least 10% of the
24 project cost and including substantial participation by at least
25 two-thirds of the members of the employee-ownership group is
26 required to qualify for the loan or guarantee.

27 (h) Feasibility study.--Assistance shall not be approved
28 without a feasibility study demonstrating a substantial prospect
29 for job retention or future job growth and a business plan
30 including steps to facilitate labor-management cooperation.

1 General adherence to the plan is required to receive funding.

2 Section 6. Criteria for evaluating applications.

3 The local administrative agencies and the department shall
4 evaluate the applications based on the following criteria:

5 (1) Number of jobs retained or created in relation to
6 the size of the loan. The loan shall not exceed a cost of
7 \$15,000 per job created or retained.

8 (2) Ability of the applicant to repay the loan and the
9 likelihood of retaining or creating jobs.

10 (3) Evidence of other private financial commitments.

11 (4) Evidence that, without the financial assistance,
12 other Federal, State or local public and private investment
13 would be insufficient to finance the employee-owned
14 enterprise.

15 (5) The extent to which a firm employs a significant
16 number of employees or represents a significant portion of
17 employment in the community.

18 (6) Any additional criteria specified by the department
19 in guidelines OR REGULATIONS. <—

20 Section 7. Administration of the program.

21 (a) Responsibility of local administrative agencies.--Local
22 administrative agencies will be responsible for promoting the
23 program, soliciting applications, evaluating applications and
24 making preliminary decisions on both technical assistance and
25 financial assistance. Up to 2% of the funds appropriated for the
26 purpose of this act may be used by local administrative agencies
27 for the purpose of administering this program.

28 (b) Approval by secretary.--The secretary will have full
29 responsibility for final approval of all applications for
30 assistance.

1 (c) Advances.--The department may make advances to local
2 administrative agencies for the purpose of making loans or loan
3 guarantees consistent with this act.

4 (D) LOAN AND LOAN GUARANTEE FEES.--LOCAL ADMINISTRATIVE <—
5 AGENCIES MAY ESTABLISH AND CHARGE REASONABLE FEES FOR PROCESSING
6 LOANS OR LOAN GUARANTEES UNDER SECTION 5, WITH THE APPROVAL OF
7 THE SECRETARY.

8 ~~(d)~~ (E) Rules and regulations.--The secretary may adopt any <—
9 rules and regulations, statements of policy ~~or~~, FORMS, <—
10 GUIDELINES AND other procedures, forms and requirements
11 necessary for the implementation of this act.

12 Section 8. Indicators of program impact.

13 On March 1 of each year of the program's existence, the
14 secretary shall submit a report to the Chief Clerk of the House
15 of Representatives and the Secretary of the Senate on the impact
16 of the program, including the rules, guidelines or statements of
17 policy used in administering this program, the number of
18 employee-ownership groups and firms receiving assistance, the
19 number of feasibility studies which were actually implemented
20 and the number of jobs retained or created and the number of
21 jobs created or retained as a result of financial assistance.
22 All recipients of funds under this program shall provide the
23 department with any or all information needed to fulfill this
24 requirement. The secretary shall provide copies of all official
25 policies, guidelines, REGULATIONS or rules regarding the program <—
26 to the Chief Clerk of the House of Representatives and to the
27 Secretary of the Senate.

28 SECTION 9. NONDISCRIMINATION. <—

29 NO LOAN, LOAN GUARANTEE OR OTHER FINANCIAL ASSISTANCE SHALL
30 BE MADE TO A RECIPIENT UNDER THIS ACT UNLESS THE RECIPIENT

1 CERTIFIES TO THE DEPARTMENT, IN A FORM SATISFACTORY TO THE
2 DEPARTMENT, THAT IT SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE
3 OR AGAINST ANY APPLICANT FOR EMPLOYMENT BECAUSE OF RACE,
4 RELIGION, COLOR, NATIONAL ORIGIN, SEX OR AGE.

5 SECTION 10. GUIDELINES AND REGULATIONS.

6 (A) ONE-YEAR EXEMPTION FROM REVIEW.--IN ORDER TO FACILITATE
7 THE SPEEDY IMPLEMENTATION OF THIS PROGRAM, THE DEPARTMENT SHALL
8 HAVE THE POWER AND AUTHORITY TO PROMULGATE, ADOPT AND USE
9 GUIDELINES WHICH SHALL BE PUBLISHED IN THE PENNSYLVANIA
10 BULLETIN. THE GUIDELINES SHALL NOT BE SUBJECT TO REVIEW PURSUANT
11 TO SECTION 205 OF THE ACT OF JULY 31, 1968 (P.L.769, NO.240),
12 REFERRED TO AS THE COMMONWEALTH DOCUMENTS LAW, SECTIONS 204(B)
13 AND 301(10) OF THE ACT OF OCTOBER 15, 1980 (P.L.950, NO.164),
14 KNOWN AS THE COMMONWEALTH ATTORNEYS ACT, OR THE ACT OF JUNE 25,
15 1982 (P.L.633, NO.181), KNOWN AS THE REGULATORY REVIEW ACT, AND,
16 EXCEPT AS PROVIDED IN SUBSECTION (C), SHALL BE EFFECTIVE FOR A
17 PERIOD NOT TO EXCEED ONE YEAR FROM THE EFFECTIVE DATE OF THIS
18 ACT.

19 (B) EXPIRATION OF EXEMPTION.--EXCEPT AS PROVIDED IN
20 SUBSECTION (C), AFTER THE EXPIRATION OF THE ONE-YEAR PERIOD, ALL
21 GUIDELINES SHALL EXPIRE AND SHALL BE REPLACED BY REGULATIONS
22 WHICH SHALL HAVE BEEN PROMULGATED, ADOPTED AND PUBLISHED AS
23 PROVIDED BY LAW.

24 (C) EXCEPTION.--THE GENERAL ASSEMBLY MAY PROVIDE FOR AN
25 EXTENSION OF THE GUIDELINES ADOPTED PURSUANT TO SUBSECTION (A),
26 IF THE LEADERSHIP COMMITTEE ESTABLISHED PURSUANT TO SECTIONS 3
27 AND 4 OF THE ACT OF DECEMBER 22, 1981 (P.L.508, NO.142), KNOWN
28 AS THE SUNSET ACT, EXTENDS THE GUIDELINES ADOPTED PURSUANT TO
29 SUBSECTION (A).

30 Section 9 11. Appropriations.

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1 The following appropriations are made:

2 (1) The sum of \$1,000,000 is hereby appropriated from
3 the Pennsylvania Economic Revitalization Fund to the
4 department for the fiscal year 1984 to 1985, for the purposes
5 of section 4.

6 (2) The sum of \$4,000,000 is hereby appropriated from
7 the Pennsylvania Economic Revitalization Fund to the
8 department for the fiscal year 1984 to 1985, for the purposes
9 of section 5.

10 Section ~~10~~ 12. Final date for approvals.

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11 No financial assistance under sections 4 and 5 shall be
12 approved after June 30, 1987.

13 Section ~~11~~ 13. Effective date.

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14 This act shall take effect immediately.