

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2100 Session of
1986

INTRODUCED BY SWEET, MANDERINO, IRVIS, PIEVSKY, ITKIN,
DOMBROWSKI, D. R. WRIGHT, SEVENTY, PETRONE, GRUITZA, LLOYD,
CAWLEY, VEON, COWELL, STABACK, BELFANTI, CALTAGIRONE, TRELLO,
PETRARCA, VAN HORNE, COLE, DeLUCA, FREEMAN, GRUPPO, STEWART,
CAPPABIANCA, KASUNIC, TELEK, MRKONIC, WAMBACH, GEORGE,
LINTON, LUCYK, LESCOVITZ, McCALL, DUFFY, MICHLOVIC, WOZNIAK,
MORRIS, BATTISTO, COLAFELLA, PRESTON, STEIGHNER, GALLAGHER,
DAWIDA, COY, OLASZ, DEAL AND MAYERNIK, FEBRUARY 4, 1986

SENATOR SHAFFER, COMMUNITY AND ECONOMIC DEVELOPMENT, IN SENATE,
AS AMENDED, JUNE 26, 1986

AN ACT

1 Amending the act of July 2, 1984 (P.L.568, No.113), entitled "An
2 act providing technical and financial assistance to employee-
3 ownership groups that seek to retain or preserve jobs by
4 restructuring an existing business into an employee-owned
5 enterprise with a substantial prospect of future recovery;
6 providing technical assistance on employee-ownership to
7 existing firms and current employee-owned enterprises in
8 Pennsylvania; and making appropriations," further providing
9 for technical assistance, financial assistance, and criteria
10 for evaluating applications; providing for grants; and
11 removing provisions relating to guidelines and regulations.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 ~~Section 1. Sections 4, 5, 6 and 7(b) of the act of July 2,~~ <—
15 ~~1984 (P.L.568, No.113), known as the Employee Ownership~~
16 ~~Assistance Program Act, are amended to read:~~
17 ~~Section 4. Technical assistance.~~

18 ~~(a) Authorization to advance funds. The department is~~

1 ~~authorized to advance funds to local administrative agencies for~~
2 ~~the purpose of providing loans to employee ownership groups in~~
3 ~~industrial and commercial enterprises as defined in section 3 of~~
4 ~~the act of August 23, 1967 (P.L.251, No.102), known as the~~
5 ~~Industrial and Commercial Development Authority Law, for~~
6 ~~technical assistance to develop or improve an employee-owned~~
7 ~~enterprise.~~

8 ~~(b) Eligibility. Employee ownership groups shall be~~
9 ~~eligible for assistance if the employees in the employee-~~
10 ~~ownership group are employed by, formerly employed by or~~
11 ~~affiliated with one of the following:~~

12 ~~(1) Existing firms facing a threat of substantial~~
13 ~~layoffs or a plant closing and investigating a reorganization~~
14 ~~of all or some portion of the firm's business activity, at~~
15 ~~sites located within this Commonwealth, as an employee-owned~~
16 ~~enterprise. For purposes of this section "existing firm"~~
17 ~~shall include an ongoing concern, the assets of an existing~~
18 ~~company or the assets of a company which has been closed for~~
19 ~~no more than [one year] two years as of the date of~~
20 ~~application for the feasibility study loan.~~

21 ~~(2) Existing firms, not necessarily facing a threat of~~
22 ~~substantial layoffs or a plant closing, but considering a~~
23 ~~conversion to an employee-owned enterprise and seeking~~
24 ~~professional services to accomplish this, if conversion to~~
25 ~~employee ownership will create net new jobs or retain~~
26 ~~existing jobs at sites within this Commonwealth.~~

27 ~~(3) Existing firms which currently have some form of~~
28 ~~employee ownership and require professional services to~~
29 ~~insure success of the employee-owned enterprise in its effort~~
30 ~~to create net new jobs or retain existing jobs at sites~~

1 ~~within this Commonwealth.~~

2 ~~(c) Uses. Loans, grants, or a combination of the two, will~~
3 ~~be made to employee ownership groups for the following purposes:~~

4 ~~(1) Feasibility studies to investigate a reorganization~~
5 ~~or new incorporation as an employee owned enterprise. At a~~
6 ~~minimum, the feasibility study should:~~

7 ~~(i) Assess the market value and demand for the~~
8 ~~product produced by the plant affected by the closing or~~
9 ~~layoff.~~

10 ~~(ii) Assess the market value and demand for other~~
11 ~~products which could be manufactured or assembled at the~~
12 ~~plant affected by the closing or layoff.~~

13 ~~(iii) Evaluate the production costs incurred if the~~
14 ~~plant were to be operated by the employee ownership~~
15 ~~group.~~

16 ~~(iv) Determine whether there exists in the affected~~
17 ~~area and in the employee ownership group, the desire and~~
18 ~~capacity to create a new production entity and to become~~
19 ~~competitive.~~

20 ~~(2) Professional services to implement a feasibility~~
21 ~~study and other professional services to develop or insure~~
22 ~~the success of an employee owned enterprise.~~

23 ~~(3) Grants for feasibility studies shall be awarded for~~
24 ~~not more than 90% of the cost of the study. Local matching~~
25 ~~shares should include, but are not limited to, individual~~
26 ~~contributions by affected employees.~~

27 ~~(d) Repayment. Loans provided for feasibility studies and~~
28 ~~other professional services to employee ownership groups to~~
29 ~~investigate a conversion to an employee owned enterprise are~~
30 ~~subject to the following repayment conditions:~~

~~(1) If the enterprise studied is purchased or improved by the employee group, the employee group shall repay the entire amount of the loan, [with] at no interest, in a lump sum at the closing of the purchase of the company or within [one year] two years after the date of the release of the loan by the department, whichever occurs later.~~

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

~~(c) Other conditions.—~~

~~(1) The applicant shall provide evidence that there is a prospect for recovery and future job growth or job retention in applications under subsection (b)(1) or a substantial prospect of job growth or job retention in applications under subsections (b)(2) and (3).~~

~~(2) Maximum State participation is [50%] 75% of the total cost of the technical assistance and the maximum loan size is \$100,000.~~

~~Section 5. Financial assistance.~~

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

~~(b) Eligibility. Eligibility for this assistance shall be limited to employee ownership groups reorganizing an existing~~

~~enterprise which is facing a threat of substantial layoffs or a plant closing, where adequate private financing is not available. For purposes of this subsection "existing enterprise" shall include an ongoing concern, the assets of an existing company or the assets of a company which has been closed for no more than [one year] two years as of the date of completion of a feasibility study.~~

~~(c) Uses. Eligible project costs shall include land and buildings, machinery and equipment and working capital secured by accounts receivable and inventory.~~

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

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

~~(2) Loan guarantees.~~

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

~~(f) Loan limits. The maximum loan or guarantee is \$1,500,000 per firm. Loan funds shall not exceed 25% of the total project costs and guarantees shall not exceed 25% of the total loan value. The term of the loan shall be the shortest consistent with the needs of the firm, but no longer than 20 years. The interest rate on loans [will be at or above the] shall be less than one half of the interest rate on the bonds~~

1 ~~issued to fund this act.~~

2 ~~(g) Equity requirement. A significant equity investment by~~
3 ~~the employee ownership group equal to at least 10% of the~~
4 ~~project cost and including substantial participation by having~~
5 ~~at least two thirds of [the] those members of the employee-~~
6 ~~ownership group employed at the project is required to qualify~~
7 ~~for the loan or guarantee.~~

8 ~~(h) Feasibility study. Assistance shall not be approved~~
9 ~~without a feasibility study demonstrating a substantial prospect~~
10 ~~for job retention or future job growth and a business plan~~
11 ~~including steps to facilitate labor management cooperation.~~
12 ~~General adherence to the plan is required to receive funding.~~

13 ~~Section 6. Criteria for evaluating applications.~~

14 ~~The local administrative agencies and the department shall~~
15 ~~evaluate the applications based on the following criteria:~~

16 ~~(1) Number of jobs retained or created in relation to~~
17 ~~the size of the loan, loan guaranty or equity participation.~~
18 ~~[The loan] Financial assistance shall not exceed a cost of~~
19 ~~\$15,000 per job created or retained.~~

20 ~~(2) Ability of the applicant to repay the loan and the~~
21 ~~likelihood of retaining or creating jobs.~~

22 ~~(3) Evidence of other private financial commitments.~~

23 ~~(4) Evidence that, without the financial assistance,~~
24 ~~other Federal, State or local public and private investment~~
25 ~~would be insufficient to finance the employee owned~~
26 ~~enterprise.~~

27 ~~(5) The extent to which a firm employs a significant~~
28 ~~number of employees or represents a significant portion of~~
29 ~~employment in the community.~~

30 ~~(6) Any additional criteria specified by the department~~

~~in guidelines or regulations.~~

~~Section 7. Administration of the program.~~

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~~(b) Approval by secretary. The secretary will have full responsibility for final approval of all applications for assistance and shall make every attempt possible to intervene as early as possible in situations which may benefit from assistance under this act. The secretary shall approve or disapprove applications within 45 days of receipt of the completed application. The secretary shall inform an applicant within 20 days of any additional information required.~~

~~* * *~~

~~Section 2. Section 10 of the act is repealed.~~

~~Section 3. This act shall take effect immediately.~~

SECTION 1. SECTIONS 4 AND 5 OF THE ACT OF JULY 2, 1984 (P.L.568, NO.113), KNOWN AS THE EMPLOYEE-OWNERSHIP ASSISTANCE PROGRAM ACT, ARE AMENDED TO READ:

SECTION 4. TECHNICAL ASSISTANCE.

(A) AUTHORIZATION TO ADVANCE FUNDS.--THE DEPARTMENT IS AUTHORIZED TO MAKE GRANTS AND TO ADVANCE FUNDS TO LOCAL ADMINISTRATIVE AGENCIES FOR THE PURPOSE OF PROVIDING LOANS TO EMPLOYEE-OWNERSHIP GROUPS IN INDUSTRIAL AND COMMERCIAL ENTERPRISES AS DEFINED IN SECTION 3 OF THE ACT OF AUGUST 23, 1967 (P.L.251, NO.102), KNOWN AS THE INDUSTRIAL AND COMMERCIAL DEVELOPMENT AUTHORITY LAW, FOR TECHNICAL ASSISTANCE TO DEVELOP OR IMPROVE AN EMPLOYEE-OWNED ENTERPRISE.

(B) ELIGIBILITY.--EMPLOYEE-OWNERSHIP GROUPS SHALL BE ELIGIBLE FOR ASSISTANCE IF THE EMPLOYEES IN THE EMPLOYEE-OWNERSHIP GROUP ARE EMPLOYED BY, FORMERLY EMPLOYED BY OR AFFILIATED WITH ONE OF THE FOLLOWING:

1 (1) EXISTING FIRMS FACING A THREAT OF SUBSTANTIAL
2 LAYOFFS OR A PLANT CLOSING AND INVESTIGATING A REORGANIZATION
3 OF ALL OR SOME PORTION OF THE FIRM'S BUSINESS ACTIVITY, AT
4 SITES LOCATED WITHIN THIS COMMONWEALTH, AS AN EMPLOYEE-OWNED
5 ENTERPRISE. FOR PURPOSES OF THIS SECTION "EXISTING FIRM"
6 SHALL INCLUDE AN ONGOING CONCERN, THE ASSETS OF AN EXISTING
7 COMPANY OR THE ASSETS OF A COMPANY WHICH HAS BEEN CLOSED FOR
8 NO MORE THAN [ONE YEAR] TWO YEARS AS OF THE DATE OF
9 APPLICATION FOR THE FEASIBILITY STUDY LOAN.

10 (2) EXISTING FIRMS, NOT NECESSARILY FACING A THREAT OF
11 SUBSTANTIAL LAYOFFS OR A PLANT CLOSING, BUT CONSIDERING A
12 CONVERSION TO AN EMPLOYEE-OWNED ENTERPRISE AND SEEKING
13 PROFESSIONAL SERVICES TO ACCOMPLISH THIS, IF CONVERSION TO
14 EMPLOYEE OWNERSHIP WILL CREATE NET NEW JOBS OR RETAIN
15 EXISTING JOBS AT SITES WITHIN THIS COMMONWEALTH.

16 (3) EXISTING FIRMS WHICH CURRENTLY HAVE SOME FORM OF
17 EMPLOYEE OWNERSHIP AND REQUIRE PROFESSIONAL SERVICES TO
18 INSURE SUCCESS OF THE EMPLOYEE-OWNED ENTERPRISE IN ITS EFFORT
19 TO CREATE NET NEW JOBS OR RETAIN EXISTING JOBS AT SITES
20 WITHIN THIS COMMONWEALTH.

21 (C) USES.--LOANS [WILL] AND GRANTS MAY BE MADE TO EMPLOYEE-
22 OWNERSHIP GROUPS FOR THE FOLLOWING PURPOSES:

23 (1) FEASIBILITY STUDIES TO INVESTIGATE A REORGANIZATION
24 OR NEW INCORPORATION AS AN EMPLOYEE-OWNED ENTERPRISE. AT A
25 MINIMUM, THE FEASIBILITY STUDY SHOULD:

26 (I) ASSESS THE MARKET VALUE AND DEMAND FOR THE
27 PRODUCT PRODUCED BY THE PLANT AFFECTED BY THE CLOSING OR
28 LAYOFF.

29 (II) ASSESS THE MARKET VALUE AND DEMAND FOR OTHER
30 PRODUCTS WHICH COULD BE MANUFACTURED OR ASSEMBLED AT THE

1 PLANT AFFECTED BY THE CLOSING OR LAYOFF.

2 (III) EVALUATE THE PRODUCTION COSTS INCURRED IF THE
3 PLANT WERE TO BE OPERATED BY THE EMPLOYEE-OWNERSHIP
4 GROUP.

5 (IV) DETERMINE WHETHER THERE EXISTS IN THE AFFECTED
6 AREA AND IN THE EMPLOYEE-OWNERSHIP GROUP, THE DESIRE AND
7 CAPACITY TO CREATE A NEW PRODUCTION ENTITY AND TO BECOME
8 COMPETITIVE.

9 (2) PROFESSIONAL SERVICES TO IMPLEMENT A FEASIBILITY
10 STUDY AND OTHER PROFESSIONAL SERVICES TO DEVELOP OR INSURE
11 THE SUCCESS OF AN EMPLOYEE-OWNED ENTERPRISE.

12 (D) REPAYMENT.--LOANS PROVIDED FOR FEASIBILITY STUDIES AND
13 OTHER PROFESSIONAL SERVICES TO EMPLOYEE-OWNERSHIP GROUPS TO
14 INVESTIGATE A CONVERSION [TO], TO CONVERT OR TO IMPROVE AN
15 EMPLOYEE-OWNED ENTERPRISE [ARE SUBJECT TO THE FOLLOWING
16 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,] SHALL BE REPAID WITH INTEREST, IN
20 A LUMP SUM AT THE CLOSING OF THE PURCHASE OF THE COMPANY OR
21 WITHIN [ONE YEAR] TWO YEARS AFTER THE DATE OF THE RELEASE OF
22 THE LOAN BY THE DEPARTMENT, 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 SUBSECTION (B)(1) OR A SUBSTANTIAL

1 PROSPECT OF JOB GROWTH OR JOB RETENTION IN APPLICATIONS UNDER
2 SUBSECTIONS (B)(2) AND (3).

3 (2) MAXIMUM STATE PARTICIPATION IS [50%] 90% OF THE
4 TOTAL COST OF THE TECHNICAL ASSISTANCE [AND THE MAXIMUM LOAN
5 SIZE IS \$100,000] OR \$100,000 IN LOAN AND GRANTS COMBINED,
6 WHICHEVER IS LESS.

7 SECTION 5. FINANCIAL ASSISTANCE.

8 (A) AUTHORIZATION TO ADVANCE FUNDS.--THE DEPARTMENT IS
9 AUTHORIZED TO ADVANCE FUNDS TO LOCAL ADMINISTRATIVE AGENCIES FOR
10 THE PURPOSE OF PROVIDING LOANS AND LOAN GUARANTEES TO EMPLOYEE-
11 OWNED ENTERPRISES REORGANIZING INDUSTRIAL, MANUFACTURING AND
12 AGRICULTURAL ENTERPRISES AS DEFINED IN SECTION 3 OF THE ACT OF
13 MAY 17, 1956 (1955 P.L.1609, NO.537), KNOWN AS THE PENNSYLVANIA
14 INDUSTRIAL DEVELOPMENT AUTHORITY ACT, FOR THE DEVELOPMENT OF
15 EMPLOYEE-OWNED ENTERPRISES.

16 (B) ELIGIBILITY.--ELIGIBILITY FOR THIS ASSISTANCE SHALL BE
17 LIMITED TO EMPLOYEE-OWNERSHIP GROUPS REORGANIZING AN EXISTING
18 ENTERPRISE WHICH IS FACING A THREAT OF SUBSTANTIAL LAYOFFS OR A
19 PLANT CLOSING, WHERE ADEQUATE PRIVATE FINANCING IS NOT
20 AVAILABLE. FOR PURPOSES OF THIS SUBSECTION "EXISTING ENTERPRISE"
21 SHALL INCLUDE AN ONGOING CONCERN, THE ASSETS OF AN EXISTING
22 COMPANY OR THE ASSETS OF A COMPANY WHICH HAS BEEN CLOSED FOR NO
23 MORE THAN [ONE YEAR] TWO YEARS AS OF THE DATE OF COMPLETION OF A
24 FEASIBILITY STUDY.

25 (C) USES.--ELIGIBLE PROJECT COSTS SHALL INCLUDE LAND AND
26 BUILDINGS, MACHINERY AND EQUIPMENT AND WORKING CAPITAL SECURED
27 BY ACCOUNTS RECEIVABLE AND INVENTORY.

28 (D) DEBT INSTRUMENTS.--THE FINANCIAL SUBSIDY PROVIDED SHOULD
29 BE THE MINIMUM NECESSARY TO ACCOMMODATE THE BORROWER'S FINANCIAL
30 NEEDS. DEBT INSTRUMENTS SHALL INCLUDE EITHER OR BOTH OF THE

1 FOLLOWING:

2 (1) LOANS, INCLUDING DEFERRED INTEREST AND PRINCIPAL
3 PAYMENTS.

4 (2) LOAN GUARANTEES.

5 (E) SECURITY.--FUNDS LOANED SHALL BE SECURED BY LIEN
6 POSITIONS ON COLLATERAL AT THE HIGHEST LEVEL OF PRIORITY WHICH
7 CAN ACCOMMODATE THE BORROWER'S ABILITY TO RAISE SUFFICIENT DEBT
8 AND EQUITY CAPITAL. WHEN THE OBLIGATION OF A FIRM IS GUARANTEED,
9 THE FINANCIAL INSTITUTION HOLDING THE OBLIGATION SHALL BE
10 REQUIRED TO ADEQUATELY SECURE THE OBLIGATION.

11 (F) LOAN LIMITS.--THE MAXIMUM LOAN OR GUARANTEE IS
12 \$1,500,000 PER FIRM. LOAN FUNDS SHALL NOT EXCEED 25% OF THE
13 TOTAL PROJECT COSTS AND GUARANTEES SHALL NOT EXCEED 25% OF THE
14 TOTAL LOAN VALUE. THE TERM OF THE LOAN SHALL BE THE SHORTEST
15 CONSISTENT WITH THE NEEDS OF THE FIRM, BUT NO LONGER THAN 20
16 YEARS. THE INTEREST RATE ON LOANS WILL BE [AT OR ABOVE THE
17 INTEREST RATE ON THE BONDS ISSUED TO FUND THIS ACT] DETERMINED
18 BY THE DEPARTMENT AS PROVIDED BY REGULATIONS.

19 (G) EQUITY REQUIREMENT.--A SIGNIFICANT EQUITY INVESTMENT BY
20 THE EMPLOYEE-OWNERSHIP GROUP EQUAL TO AT LEAST 10% OF THE
21 PROJECT COST AND INCLUDING SUBSTANTIAL PARTICIPATION BY AT LEAST
22 TWO-THIRDS OF THE MEMBERS OF THE CURRENT EMPLOYEE-OWNERSHIP
23 GROUP IS REQUIRED TO QUALIFY FOR THE LOAN OR GUARANTEE.

24 (H) FEASIBILITY STUDY.--ASSISTANCE SHALL NOT BE APPROVED
25 WITHOUT A FEASIBILITY STUDY DEMONSTRATING A SUBSTANTIAL PROSPECT
26 FOR JOB RETENTION OR FUTURE JOB GROWTH AND A BUSINESS PLAN
27 INCLUDING STEPS TO FACILITATE LABOR-MANAGEMENT COOPERATION.
28 GENERAL ADHERENCE TO THE PLAN IS REQUIRED TO RECEIVE FUNDING.

29 SECTION 2. SECTION 10 OF THE ACT IS REPEALED.

30 SECTION 3. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.