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No. _____

Legislative Reference Bureau

AN ACT

Establishing the Office of Employee Ownership within the Department of Community and Economic Development; establishing the Main Street Employee Ownership Grant Program; and providing technical and financial assistance to employee-owned enterprises.

INTRODUCED _____ **20** _____

By _____ **District NO.** _____

By _____ **District NO.** _____

By _____ **District NO.** _____

By _____ **District NO.** _____

See next page for additional co-sponsors.

Prior Session _____

Referred to Committee on	
Date _____	20 _____
Reported _____	20 _____
As Committed-Amended	
Recommendation	

By Hon. _____	

1950

AN ACT

1 Establishing the Office of Employee Ownership within the
2 Department of Community and Economic Development;
3 establishing the Main Street Employee Ownership Grant
4 Program; and providing technical and financial assistance to
5 employee-owned enterprises.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Employee
10 Ownership Assistance Program Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Department." The Department of Community and Economic
16 Development of the Commonwealth.

17 "Employee-owned enterprise." One of the following:

18 (1) A business that meets all of the following
19 conditions:

1 (i) is organized as:

2 (A) an eligible worker-owned cooperative as
3 defined in the Internal Revenue Code of 1986 (Public
4 Law 99-514, 26 U.S.C. § 1042); or

5 (B) a corporation in which the employees own the
6 stock of the corporation through an Employee Stock
7 Ownership Plan, within the meaning of section 4975(e)
8 (7) of the Internal Revenue Code of 1986.

9 (ii) a majority of the voting rights are held by
10 employees and all employees who have stock allocated to
11 them are entitled to vote; shares are voted in such a
12 manner that the vote of the majority of the employees
13 controls the vote of the majority of shares; voting
14 rights on corporate matters for shares held in a trust
15 for the employees shall pass through to those employees,
16 at least to the extent required by the pass-through
17 voting requirements of section 864(c)(4)(D) of the
18 Internal Revenue Code of 1986; and

19 (iii) the majority of the members of the board of
20 directors are elected by the employees.

21 (2) A business that is organized in a manner determined
22 by the secretary to involve substantial employee
23 participation.

24 (3) An employee-ownership trust.

25 "Employee-ownership group." A corporation or other entity,
26 including a labor union formed by or on behalf of the current or
27 former employees of an industrial or commercial firm or facility
28 located in this Commonwealth for the purpose of assuming
29 ownership or control of the firm or facility, and operating it
30 as an employee-owned enterprise.

1 "Employee-ownership trust." Company stock or profit sharing
2 being held by a trustee on behalf of the company's employees
3 with employees receiving a percentage of ongoing profits or
4 401(k) retirement plans throughout employment without receiving
5 an equity stake in the company.

6 "Local administrative agency." An organization that enters
7 into a written agreement with the department to administer
8 technical and financial assistance under this act, including:

9 (1) A municipality.

10 (2) A local development district of the Appalachian
11 Regional Commission.

12 (3) A certified economic development organization
13 certified by The Pennsylvania Industrial Development
14 Authority under 64 Pa.C.S. § 1123 (relating to certification
15 of economic development organizations).

16 (4) A nonprofit economic development organization
17 designated by the secretary.

18 "Office." The Office of Employee Ownership established under
19 section 3(a).

20 "Secretary." The Secretary of Community and Economic
21 Development of the Commonwealth.

22 Section 3. Office of Employee Ownership.

23 (a) Establishment.--The Office of Employee Ownership is
24 established in the department to serve as an advocate for
25 improving government knowledge and support for well-designed,
26 broad-based profit-sharing and ownership stakes. The office
27 shall increase awareness of how agency programs affect companies
28 with profit-sharing and ownership stake programs and promote
29 legislative or regulatory changes necessary to ensure that
30 government policies encourage the adoption of existing and

1 emerging sharing programs.

2 (b) Gubernatorial appointment.--The Governor shall appoint
3 an employee ownership advocate. The employee ownership advocate
4 shall be an individual who by reason of training, experience or
5 attainment is qualified to represent the interest of employee-
6 owned enterprises. The following shall apply:

7 (1) No individual who serves as an employee ownership
8 advocate shall, while serving in the position, engage in any
9 business, vocation or other employment, or have other
10 interests, inconsistent with the individual's official
11 responsibilities.

12 (2) The individual serving as an employee ownership
13 advocate may not seek or accept employment or render
14 beneficial services for compensation with any person or
15 corporation, as defined in 66 Pa.C.S. § 102 (relating to
16 definitions), during the tenure of the appointment and for a
17 period of two years after the appointment is served or
18 terminated.

19 (3) An individual who is appointed to the position of
20 employee ownership advocate may not seek election or accept
21 appointment to any public office during the tenure as the
22 employee ownership advocate and for a period of two years
23 after the appointment is served or terminated.

24 (4) The employee ownership advocate shall oversee the
25 office and the programs established in this act.

26 (c) Duties.--The office shall aid and guide businesses on
27 the benefits and formation of an employee-owned enterprise by
28 providing outreach, education and technical assistance. The
29 office shall:

30 (1) Establish a robust and wide-reaching network of

1 technical support for businesses wishing to convert to an
2 employee-owned enterprise.

3 (2) Prepare and make publicly accessible in print and on
4 the office's publicly accessible Internet website information
5 to educate and guide business owners and employees in this
6 Commonwealth on the benefits and formation of employee-owned
7 enterprises.

8 (3) Educate businesses and communities across this
9 Commonwealth on the economic and community benefits of
10 employee-owned enterprises.

11 (4) Identify barriers to the development and advancement
12 of employee-owned enterprises and recommend State actions and
13 resources to remove barriers.

14 (5) Gather and maintain statistics on all employee-owned
15 enterprises in place across this Commonwealth.

16 (6) Evaluate and submit a report by December 31 of each
17 year to the Community, Economic and Recreational Development
18 Committee of the Senate and the Commerce Committee of the
19 House of Representatives. The report shall include:

20 (i) The results of the office's efforts, impacts and
21 benefits.

22 (ii) A list of all employee-owned enterprises in
23 this Commonwealth and the counties in which the employee-
24 owned enterprises are located.

25 (iii) Recommendations on the most effective
26 utilization of Commonwealth funding to encourage the
27 formation of employee-owned enterprises.

28 (iv) Other information deemed necessary by the
29 employee ownership advocate.

30 (7) Select and fund a Pennsylvania 501(c)(3) nonprofit

1 organization defined under section 501(c)(3) of the Internal
2 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)
3 (3)) with well-established knowledge of employee-owned
4 enterprises to work with the office and the department to
5 ensure the execution requirements under this act.

6 Section 4. Technical and financial assistance program.

7 The office shall establish a technical and financial
8 assistance program to promote the development of employee-owned
9 enterprises.

10 Section 5. Technical assistance.

11 (a) Authorization to allocate funds.--The office may
12 allocate or distribute money to local administrative agencies
13 for the purpose of providing grants and loans to employee-
14 ownership groups in industrial facilities and commercial
15 facilities as defined in section 3 of the act of August 23, 1967
16 (P.L.251, No.102), known as the Economic Development Financing
17 Law, for technical assistance to develop or improve an employee-
18 owned enterprise.

19 (b) Eligibility.--An employee-ownership group shall be
20 eligible for assistance if the employees in the employee-
21 ownership group are employed by, formerly employed by or
22 affiliated with one of the following:

23 (1) An existing firm facing a threat of substantial
24 layoffs or a plant closing and investigating a reorganization
25 of all or some portion of the firm's business activity, at
26 sites located within this Commonwealth, as an employee-owned
27 enterprise. For purposes of this subsection, the term
28 "existing firm" shall include an ongoing concern, the assets
29 of an existing company or the assets of a company that has
30 been closed for no more than one year as of the date of

1 application for the feasibility study loan.

2 (2) An existing firm, not necessarily facing a threat of
3 substantial layoffs or a plant closing but considering a
4 conversion to an employee-owned enterprise and seeking
5 professional services to accomplish the conversion if
6 conversion to employee ownership will create new jobs or
7 retain existing jobs at sites in this Commonwealth.

8 (3) An existing firm which currently has some form of
9 employee ownership and requires professional services to
10 ensure success of the employee-owned enterprise in the effort
11 to create new jobs or retain existing jobs at sites in this
12 Commonwealth.

13 (c) Use of awarded money.--An employee-ownership group may
14 be awarded sums of money for the following purposes:

15 (1) Feasibility studies to investigate a reorganization
16 or new incorporation as an employee-owned enterprise. At a
17 minimum, the feasibility study shall:

18 (i) Assess the market value and demand for the
19 product produced by the plant affected by the closing or
20 layoff.

21 (ii) Assess the market value and demand for other
22 products that could be manufactured or assembled at the
23 plant affected by the closing or layoff.

24 (iii) Evaluate the production costs to be incurred
25 if the plant were to be operated by the employee-
26 ownership group.

27 (iv) Determine whether there exists in the affected
28 area and in the employee-ownership group the desire and
29 capacity to create a new production entity and to become
30 competitive.

1 (2) Professional services to implement a feasibility
2 study and other professional services to develop or ensure
3 the success of an employee-owned enterprise.

4 (d) Repayment of awarded money.--Money awarded to an
5 employee-ownership group under subsection (c) is subject to the
6 following repayment conditions:

7 (1) If the enterprise studied is purchased or improved
8 by the employee-ownership group, the sum of money awarded
9 will constitute a loan and the employee-ownership group shall
10 repay the entire amount of the loan, with interest, in a lump
11 sum at the closing of the purchase of the company or within
12 one year after the date of the release of the loan by the
13 office, whichever occurs later. The amount of the loan repaid
14 shall be returned to the office for the purpose of issuing
15 additional loans. The interest paid on the loan shall be used
16 by the office for administrative costs associated with
17 administering this act.

18 (2) If the enterprise studied is not purchased by the
19 employee-ownership group within one year after the completion
20 of the feasibility study, the applicant shall submit a final
21 report concerning the feasibility of repaying the awarded
22 money.

23 (3) The office shall evaluate the employee-ownership
24 group's final report under paragraph (2) to determine if
25 repayment is feasible. If the office determines that the
26 employee-ownership group is unable to repay the sum of
27 awarded money, the amount of money that was awarded to the
28 employee-ownership group will constitute a grant. If the
29 office determines that the employee-ownership group is able
30 to repay some or all of the money awarded, the amount of

1 money that was awarded to the employee-ownership group will
2 constitute a loan.

3 (e) Other conditions.--

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

9 (2) Maximum State participation shall be 50% of the
10 total cost of the technical assistance and the maximum loan
11 size shall be \$100,000.

12 Section 6. Financial assistance.

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

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

30 (c) Use of assistance.--Eligible project costs shall include

1 land and buildings, machinery and equipment and working capital
2 secured by accounts receivable and inventory.

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

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

9 (2) Loan guarantees.

10 (e) Security.--Loans shall be secured by lien positions on
11 collateral at the highest level of priority which can
12 accommodate the borrower's ability to raise sufficient debt and
13 equity capital. When the obligation of a firm is guaranteed, the
14 financial institution holding the obligation shall adequately
15 secure the obligation. The office shall require collateral
16 against loans or loan guarantees awarded under this act. The
17 office may determine collateral per application.

18 (f) Loan limits.--The maximum loan or guarantee is
19 \$1,500,000 per firm. The amount of a loan shall not exceed 25%
20 of the total project costs and guarantees shall not exceed 25%
21 of the total loan value. The term of the loan shall be the
22 shortest, consistent with the needs of the firm, but no longer
23 than 20 years.

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

29 (h) Feasibility study.--The office may not approve
30 assistance without a feasibility study demonstrating a

1 substantial prospect for job retention or future job growth and
2 a business plan, including steps to facilitate labor-management
3 cooperation. General adherence to the feasibility study is
4 required for an eligible employee-ownership group to receive a
5 loan or loan guarantee under this section.

6 Section 7. Criteria for evaluating applications.

7 The local administrative agencies and the office shall
8 evaluate an application under section 6 based on the following
9 criteria:

10 (1) Number of jobs retained or created in relation to
11 the size of the loan. The loan shall not exceed a cost of
12 \$15,000 per job created or retained.

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

15 (3) Evidence of other private financial commitments.

16 (4) Evidence that, without the financial assistance,
17 other Federal, State or local public and private investment
18 would be insufficient to finance the employee-owned
19 enterprise.

20 (5) The extent to which a firm employs a significant
21 number of employees or represents a significant portion of
22 employment in the community.

23 (6) Additional criteria specified by guidelines or
24 regulations of the department.

25 Section 8. Main Street Employee Ownership Grant Program.

26 (a) Establishment.--The Main Street Employee Ownership Grant
27 Program is established within the office to provide grants to
28 businesses that are eligible under subsection (b).

29 (b) Eligibility.--A business is eligible for grants under
30 this section if the business:

1 (1) Has fewer than 100 employees.

2 (2) Is a retail establishment.

3 (c) Use of grant.--Grant money awarded may be used by an
4 eligible business to:

5 (1) Acquire a business to be an employee-owned
6 enterprise.

7 (2) Convert a business to an employee-owned enterprise.

8 (3) Provide support for technical assistance, such as
9 the proper management of an employee-owned enterprise, best
10 business practices or other assistance approved by the
11 office.

12 (d) Limitation and approval.--Grant awards may not exceed
13 \$35,000. If a business is approved for a grant under this
14 section, the business shall have an automatic approval for
15 financial assistance under section 6.

16 Section 9. Administration.

17 (a) Responsibility of local administrative agencies.--Local
18 administrative agencies shall promote the employee ownership
19 program and the Main Street Employee Ownership Grant Program by
20 soliciting applications, evaluating applications and making
21 preliminary decisions on both technical assistance and financial
22 assistance. Not more than 2% of the money appropriated for the
23 purpose of this act may be used by local administrative agencies
24 for the purpose of administering these programs.

25 (b) Approval by employee ownership advocate.--The employee
26 ownership advocate shall have full responsibility for final
27 approval of all applications for assistance.

28 (c) Advances.--The office may make money advances to local
29 administrative agencies for the purpose of making loans, loan
30 guarantees or grants consistent with this act. Advances under

1 this section must be repaid to the office when the loan or loan
2 guarantee is repaid by the borrower.

3 (d) Loan and loan guarantee fees.--Local administrative
4 agencies may establish and charge reasonable fees for processing
5 loans or loan guarantees under section 6, with the approval of
6 the secretary.

7 (e) Rules and regulations.--The secretary may promulgate
8 rules and regulations, statements of policy or forms, guidelines
9 and other procedures, forms and requirements necessary for the
10 implementation of this act.

11 Section 10. Indicators of program impact.

12 (a) Report.--On March 1 of each year of the employee
13 ownership program's and the Main Street Employee Ownership Grant
14 Program's existence, the employee ownership advocate shall
15 submit a report to the Secretary of the Senate and the Chief
16 Clerk of the House of Representatives on the impact of the
17 programs, including:

18 (1) Rules, guidelines or statements of policy used in
19 administering the programs.

20 (2) The number of employee-ownership groups and firms
21 receiving assistance.

22 (3) The number of feasibility studies which were
23 actually implemented.

24 (4) The number of jobs retained or created and the
25 number of jobs created or retained as a result of financial
26 assistance.

27 (5) Other information deemed necessary by the employee
28 ownership advocate.

29 (b) Information to office.--Recipients of assistance under
30 these programs shall provide the office with the information

1 needed to fulfill the reporting requirement under subsection
2 (a).

3 Section 11. Nondiscrimination.

4 No loan, loan guarantee, grant or other financial assistance
5 shall be made to a recipient under this act unless the recipient
6 certifies to the department, in a form satisfactory to the
7 department, that it shall not discriminate against an employee
8 or against an applicant for employment because of race,
9 religion, color, national origin, sex or age.

10 Section 12. Guidelines and regulations.

11 (a) One-year exemption from review.--In order to facilitate
12 implementation of this act, the department may promulgate, adopt
13 and use temporary guidelines that shall be transmitted as a
14 notice to the Legislative Reference Bureau for publication in
15 the Pennsylvania Bulletin. The guidelines shall not be subject
16 to review under:

17 (1) Sections 201, 202, 203, 204 and 205 of the act of
18 July 31, 1968 (P.L.769, No.240), referred to as the
19 Commonwealth Documents Law.

20 (2) Section 204(b) of the act of October 15, 1980 (P.L.
21 950, No.164), known as the Commonwealth Attorneys Act.

22 (3) The act of June 25, 1982 (P.L.633, No.181), known as
23 the Regulatory Review Act.

24 (b) Expiration of exemption.--After the expiration of the
25 one-year period, all guidelines shall expire and shall be
26 replaced by regulations that shall have been promulgated,
27 adopted and published as provided by law.

28 Section 13. Annual appropriation and funding sources.

29 (a) Estimate of expenditures.--Before November 1 of each
30 year, the employee ownership advocate shall estimate the total

1 expenditures for the office and submit the estimate to the
2 Governor in accordance with section 610 of the act of April 9,
3 1929 (P.L.177, No.175), known as The Administrative Code of
4 1929. At the same time the office submits the estimate to the
5 Governor, the office shall also submit the estimate to the
6 General Assembly. The following shall apply:

7 (1) The employee ownership advocate shall be afforded an
8 opportunity to appear before the Governor, the Appropriations
9 Committee of the Senate and the Appropriations Committee of
10 the House of Representatives regarding the estimate.

11 (2) For each fiscal year, the office shall calculate the
12 office's proposed appropriation by subtracting the unspent
13 portion of the office's budget for the previous fiscal year
14 from the total appropriation that was approved by the General
15 Assembly. The remainder shall be allocated to the department
16 for the next fiscal year.

17 (b) Allocation of assessment.--For each fiscal year, the
18 office shall determine for the preceding calendar year the
19 amount of its expenditures directly attributable to
20 administering this act as follows:

21 (1) Expenditures of the office directly attributable to
22 section 5 of this act.

23 (2) Expenditures of the office directly attributable to
24 section 6 of this act.

25 (3) Expenditures of the office directly attributable to
26 section 8 of this act.

27 (4) Expenditures of the office directly attributable to
28 section 9 of this act.

29 (5) Total expenditures of the office directly
30 attributable to administering this act.

1 (c) Funding sources.--Any of the following may be used as
2 funding sources for the office for the purposes of this act:

3 (1) Money appropriated for the purposes of this act.

4 (2) Federal money appropriated or authorized for the
5 purposes of this act.

6 (3) Money received from a State agency through an
7 interagency agreement or memorandum of understanding.

8 (4) A gift or other contribution from a public or
9 private source.

10 (5) Returns on money dedicated for the purposes of this
11 act, including, but not limited to, interest on loans or loan
12 guarantees.

13 (6) Any appropriation that was unspent by the end of a
14 previous fiscal year.

15 Section 14. Effective date.

16 This act shall take effect in 60 days.