

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, HOEFFEL, 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 THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 18, 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) is organized as a worker cooperative, within the~~ <—
6 ~~meaning of Subchapter T of the Internal Revenue Code of 1954,~~
7 ~~as amended;~~

8 ~~(2) in which the employees own the stock of the~~
9 ~~corporation through an Employee Stock Ownership Plan, within~~
10 ~~the meaning of section 4975(e)(7) of the Internal Revenue~~
11 ~~Code of 1954, as amended; or~~

12 ~~(3) involves a substantial share of employee~~
13 ~~participation, as determined by the secretary.~~ <—

14 (1) MEETS ALL OF THE FOLLOWING CONDITIONS:

15 (I) IS ORGANIZED AS:

16 (A) A WORKER COOPERATIVE, WITHIN THE MEANING OF
17 SUBCHAPTER T OF THE INTERNAL REVENUE CODE OF 1954, AS
18 AMENDED; OR

19 (B) A CORPORATION IN WHICH THE EMPLOYEES OWN THE
20 STOCK OF THE CORPORATION THROUGH AN EMPLOYEE STOCK
21 OWNERSHIP PLAN, WITHIN THE MEANING OF SECTION
22 4975(E)(7) OF THE INTERNAL REVENUE CODE OF 1954, AS
23 AMENDED;

24 (II) A MAJORITY OF THE VOTING RIGHTS ARE HELD BY
25 EMPLOYEES AND ALL EMPLOYEES WHO HAVE STOCK ALLOCATED TO
26 THEM ARE ENTITLED TO VOTE; SHARES ARE VOTED IN SUCH A
27 MANNER THAT THE VOTE OF THE MAJORITY OF THE EMPLOYEES
28 CONTROLS THE VOTE OF THE MAJORITY OF SHARES; VOTING
29 RIGHTS ON CORPORATE MATTERS FOR SHARES HELD IN A TRUST
30 FOR THE EMPLOYEES SHALL PASS THROUGH TO THOSE EMPLOYEES,

1 AT LEAST TO THE EXTENT REQUIRED BY THE PASS THROUGH
2 VOTING REQUIREMENTS OF SECTION 409A(E) OF THE INTERNAL
3 REVENUE CODE OF 1954, AS AMENDED;

4 (III) THE MAJORITY OF THE MEMBERS OF THE BOARD OF
5 DIRECTORS ARE ELECTED BY THE EMPLOYEES; OR

6 (2) IS ORGANIZED IN A MANNER DETERMINED BY THE SECRETARY
7 TO INVOLVE SUBSTANTIAL EMPLOYEES PARTICIPATION.

8 "Employee-ownership group." A corporation or other entity,
9 including labor ~~union~~ UNIONS, formed by or on behalf of the <—
10 current or former employees of an industrial or commercial firm
11 or facility located in this Commonwealth for the purpose of
12 ASSUMING OWNERSHIP OR CONTROL OF THE FIRM OR FACILITY AND <—
13 operating it as an employee-owned enterprise.

14 "Local administrative agency." An organization which enters
15 into a written agreement with the department to administer
16 technical and financial assistance pursuant to this act,
17 including a municipality, a county, a local development district
18 of the Appalachian Regional Commission, an industrial
19 development corporation organized and existing under the act of
20 May 17, 1956 (P.L.1609, No.537), known as the Pennsylvania
21 Industrial Development Authority Act, or any other nonprofit
22 economic development organization designated by the secretary.

23 "Secretary." The Secretary of Commerce.

24 Section 3. Employee Ownership Program.

25 The department will establish a technical and financial
26 assistance program to promote the development of employee-owned
27 enterprises.

28 Section 4. Technical assistance.

29 (a) Authorization to advance funds.--The department is
30 authorized to advance funds to local administrative agencies for

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

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

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

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

26 (3) Existing firms which currently have some form of
27 employee ownership and require professional services to
28 insure success of the employee-owned enterprise in its effort
29 to create NET new jobs or retain existing jobs at sites <—
30 within this Commonwealth.

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

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

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

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

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

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

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

(d) Repayment.--Loans provided for feasibility studies and other professional services to employee-ownership groups to investigate a conversion to an employee-owned enterprise are 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 interest, in a lump sum at the closing of the purchase of the company or within one year after the date of the release of the loan by the department,

<—

1 whichever occurs later.

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

6 (e) Other conditions.--

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

12 (2) Maximum State participation is 50% of the total cost
13 of the technical assistance and the maximum loan size is
14 \$100,000.

15 (3) The department may develop additional rules,
16 procedures, forms and guidelines to implement the technical
17 assistance program, including, but not limited to, provisions
18 for the terms, conditions and evaluation criteria for the
19 loans.

20 Section 5. Financial assistance.

21 (a) Authorization to advance funds.--The department is
22 authorized to advance funds to local administrative agencies for
23 the purpose of providing loans and loan guarantees to EMPLOYEE-
24 OWNED ENTERPRISES REORGANIZING industrial, manufacturing and
25 agricultural enterprises as defined in section 3 of the act of
26 May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania
27 Industrial Development Authority Act, for the development of
28 employee-owned enterprises.

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

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

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

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

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

17 (2) Loan guarantees.

18 (e) Security.--Funds loaned shall be secured by lien
19 positions on collateral at the highest level of priority which
20 can accommodate the borrower's ability to raise sufficient debt
21 and equity capital. When the obligation of a firm is guaranteed,
22 the financial institution holding the obligation shall be
23 required to ADEQUATELY secure the obligation. <—

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

(g) Equity requirement.--A significant equity investment by the employee-ownership group equal to at least 10% of the project cost and including substantial participation by at least two-thirds of the ~~employees~~ MEMBERS OF THE EMPLOYEE-OWNERSHIP GROUP is required to qualify for the loan or guarantee.

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

Section 6. Criteria for evaluating applications.

The LOCAL ADMINISTRATIVE AGENCIES AND THE department shall evaluate the applications based on the following criteria:

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

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

(3) Evidence of other private financial commitments.

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

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

(6) Any additional criteria specified by the department in guidelines.

~~Section 7. Rules, procedures, forms and guidelines.~~

~~The department shall establish additional rules, procedures,~~

1 ~~forms and guidelines to implement the financial assistance~~
2 ~~programs, including provisions for repayment and reporting~~
3 ~~requirements.~~

4 Section 7. Administration of the program. <—

5 (a) Responsibility of local administrative agencies.--Local
6 administrative agencies will be responsible for promoting the
7 program, soliciting applications, evaluating applications and
8 making preliminary decisions on both technical assistance and
9 financial assistance. Up to 2% of the funds appropriated for the
10 purpose of this act may be used by local administrative agencies
11 for the purpose of administering this program.

12 (b) Approval by secretary.--The secretary will have full
13 responsibility for final approval of all applications for
14 assistance.

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

18 (d) Rules and regulations.--The secretary may adopt any
19 rules and regulations, statements of policy or other procedures,
20 forms and requirements necessary for the implementation of this
21 act.

22 Section 8. Indicators of program impact. <—

23 On March 1 of each year of the program's existence, the
24 secretary shall submit a report to the Chief Clerk of the House
25 of Representatives and the Secretary of the Senate on the impact
26 of the program, including the rules, guidelines or statements of
27 policy used in administering this program, the number of
28 employee-ownership groups and firms receiving assistance, the
29 number of feasibility studies which were actually implemented
30 and the number of jobs retained or created and the number of

1 jobs created or retained as a result of financial assistance.
2 All recipients of funds under this program shall provide the
3 department with any or all information needed to fulfill this
4 requirement. The secretary shall provide copies of all official
5 policies, guidelines or rules regarding the program to the Chief
6 Clerk of the House of Representatives and to the Secretary of
7 the Senate.

8 Section ~~10~~ 9. Appropriations. <—

9 The following appropriations are made:

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

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

18 Section ~~11~~ 10. Final date for approvals. <—

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

21 Section ~~12~~ 11. Effective date. <—

22 This act shall take effect immediately.