

No. 1984-113

AN ACT

HB 2295

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

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

Section 1. Short title.

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

Section 2. Definitions.

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

“Department.” The Department of Commerce.

“Employee-owned enterprise.” A business which either:

(1) meets all of the following conditions:

(i) is organized as:

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

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

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

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

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

“Employee-ownership group.” A corporation or other entity, including labor unions, formed by or on behalf of the current or former employees of an industrial or commercial firm or facility located in this Commonwealth for the purpose of assuming ownership or control of the firm or facility and operating it as an employee-owned enterprise.

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

“Secretary.” The Secretary of Commerce.

Section 3. Employee-ownership program.

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

Section 4. Technical assistance.

(a) Authorization to advance funds.—The department is authorized 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) Existing firms facing a threat of substantial layoffs or a plant closing and investigating a reorganization of all or some portion of the firm’s business activity, at sites located within this Commonwealth, as an employee-owned enterprise. For purposes of this section “existing firm” 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 as of the date of application for the feasibility study loan.

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

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

(e) 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 subsection (b)(2) and (3).

(2) Maximum State participation is 50% 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 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 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 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 or regulations.

Section 7. Administration of the program.

(a) Responsibility of local administrative agencies.—Local administrative agencies will be responsible for promoting the program, soliciting applications, evaluating applications and making preliminary decisions on both

technical assistance and financial assistance. Up to 2% of the funds appropriated for the purpose of this act may be used by local administrative agencies for the purpose of administering this program.

(b) Approval by secretary.—The secretary will have full responsibility for final approval of all applications for assistance.

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

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

(e) Rules and regulations.—The secretary may adopt any rules and regulations, statements of policy, forms, guidelines and other procedures, forms and requirements necessary for the implementation of this act.

Section 8. Indicators of program impact.

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

Section 9. Nondiscrimination.

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

Section 10. Guidelines and regulations.

(a) One-year exemption from review.—In order to facilitate the speedy implementation of this program, the department shall have the power and authority to promulgate, adopt and use guidelines which shall be published in the Pennsylvania Bulletin. The guidelines shall not be subject to review pursuant to section 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, and, except as provided in subsection (c), shall be effective for a period not to exceed one year from the effective date of this act.

(b) Expiration of exemption.—Except as provided in subsection (c), after the expiration of the one-year period, all guidelines shall expire and

shall be replaced by regulations which shall have been promulgated, adopted and published as provided by law.

(c) Exception.—The General Assembly may provide for an extension of the guidelines adopted pursuant to subsection (a), if the Leadership Committee established pursuant to sections 3 and 4 of the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act, extends the guidelines adopted pursuant to subsection (a).

Section 11. Appropriations.

The following appropriations are made:

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

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

Section 12. Final date for approvals.

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

Section 13. Effective date.

This act shall take effect immediately.

APPROVED—The 2nd day of July, A. D. 1984.

DICK THORNBURGH