

No. 1989-47

AN ACT

HB 1293

Amending the act of July 2, 1984 (P.L.568, No.113), entitled "An act 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," defining employee-owned enterprises; regulating technical assistance, financial assistance and program administration; further providing for the final date for approvals; and making repeals.

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

Section 1. The title of the act of July 2, 1984 (P.L.568, No.113), known as the Employee-Ownership Assistance Program Act, is amended to read:

AN ACT

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

Section 2. Sections 2 and 3 of the act are amended to read:

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 employ-

ees 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]

(iv) *is a business which involves substantial employee participation;*  
or

(2) [is organized in a manner determined by the secretary to involve substantial employees' participation.] *is a business in which 30% to 50% of the stock is owned by the employees and which involves substantial employee participation. In the case of a business whose employees own less than 50% of the stock at the time of application for feasibility study assistance, the feasibility study must include a plan for employee-ownership of at least 50% of the stock within ten years of the restructuring or creation of the business.*

“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] a firm or facility located in this Commonwealth for the purpose of *exploring the feasibility of* assuming ownership or control, *or participating in the ownership* 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.

“*Technical assistance.*” *Prefeasibility assessments, feasibility studies and professional services.*

Section 3. Employee-ownership program.

The department will establish a technical and financial assistance program to promote the development of employee-owned enterprises *and increase employee participation in new and existing businesses for the purpose of retaining existing jobs and creating new employment opportunities.*

Section 3. Sections 4 and 5 of the act, amended July 9, 1986 (P.L.1197, No.102), are amended to read:

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] provide grants and 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 two years as of the date of application for the **[feasibility study loan] technical assistance**.

(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] technical assistance** 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.

(4) *New firms seeking to structure a business as an employee-owned enterprise and requiring professional services.*

(5) *In the case of a firm where existing ownership is not interested in converting to an employee-owned enterprise, a prefeasibility study shall be limited to the following in anticipation of creating a new firm:*

(i) *Whether a company's product or service is obsolete or in demand.*

(ii) *Whether a plant is obsolete or efficient.*

(iii) *Whether a firm has the qualified and committed labor and management to succeed.*

(c) **Uses.**—**[Loans, grants or a combination of the two] Grants and loans** will be made to employee-ownership groups for the following purposes:

(1) *Prefeasibility assessments to indicate quickly if an employee-ownership structure can or cannot succeed. The prefeasibility assessment shall include, but is not limited to, an investigation of the following:*

(i) *whether a company's product or service is obsolete or in demand;*

(ii) *whether a plant is obsolete or efficient;*

(iii) *whether present owners are amenable to the reorganization;*  
*and*

(iv) *whether a firm has the qualified and committed labor and management to succeed.*

**[(1)] (2)** Feasibility studies to investigate a reorganization or new incorporation as an employee-owned enterprise *will be funded if the prefeasibility assessment set forth in subsection (c)(1) or other assessment*

*indicates that a conversion is possible.* 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.]**

*(i) investigate the existing and future market value and demand for the company's existing products and for other products and services which could be produced and delivered;*

*(ii) determine the level of investment necessary to convert the business and make it viable, including the costs of any employee-ownership training;*

*(iii) determine whether financing can be obtained;*

*(iv) develop a business plan for the company, including a plan to phase-in the agreed upon percentage of employee-ownership and a plan to ensure substantial employee participation; and*

*(v) determine the number of jobs which would be created or retained.*

**[(2)] (3) Professional services to [implement a feasibility study and other professional services] reorganize or convert a business to an employee-owned enterprise and to develop or insure the success of an employee-owned enterprise.**

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

**(d) Amounts, repayments.—**

**(1) The department may contract annually with consultants who will perform the prefeasibility assessments.**

**(2) Feasibility study funds shall be awarded for 90% of the cost of a feasibility study, not to exceed \$100,000.**

**(3) Funds for professional services shall be awarded for 90% of the total cost of professional services, not to exceed \$50,000.**

**[(d) Repayment.—Loans] (4) Funds provided for feasibility studies [and other] or professional services [to employee-ownership groups to investigate a conversion to an employee-owned enterprise] are subject to the following repayment [condition] conditions:**

**(i) If the enterprise studied is purchased or improved [by the employee group,] as an employee-owned enterprise, the employee group shall repay the entire amount of the loan, at no interest, in a lump sum at the closing of the purchase of the company or within two years after the date of the release of the loan by the department, whichever occurs later.**

**[(e) Other conditions.—**

**(1) (i)** 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 90% of the total cost of the technical assistance and the maximum size of State participation is \$100,000.]**

**(e) Other conditions.—Parties shall not use feasibility studies to gain an advantage in a labor dispute, negotiation or dissemination of any information unless agreed to by both parties.**

## 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) (a) 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,] Employee-ownership groups in the types of firms defined in section 4(b) are eligible for financial assistance 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 [two] five years as of the date of completion of a feasibility study.**

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

**(d) (c) 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) (d) 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) (e) 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 shall be determined by the department.**

**(g) (f) 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 having at least two-thirds of the current members of the employee-ownership group employed at the project is required to qualify for the loan or guarantee.

**[(h)] (g) 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 4. Section 6 of the act is repealed.

Section 5. Section 7 of the act, amended July 9, 1986 (P.L.1197, No.102), is amended to read:

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.]

*(a) Application evaluations.*—Criteria for evaluating applications shall be specified by the department.

*(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 *for assistance* within 45 days of receipt of the completed application. The secretary shall inform an applicant within 20 days of any additional information required.

*(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) Use of funds.*—Funds appropriated for the purpose of this act may be used by the department for the purpose of administering and marketing the program.

**[(e)] (f) 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 6. Sections 8 and 9 of the act are amended to read:

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 7. Section 11 of the act is repealed.

Section 8. Section 12 of the act, amended July 9, 1987 (P.L.214, No.36), is amended to read:

Section 12. Final date for approvals.

No financial assistance under sections 4 and 5 shall be approved after June 30, **[1989] 1992**.

Section 9. This act shall take effect immediately.

APPROVED—The 10th day of July, A. D. 1989.

ROBERT P. CASEY