



**Sub. S.B. 186**

123rd General Assembly  
(As Passed by the Senate)

**Sens. Herington, Furney, Fingerhut, DiDonato, Mallory, Cupp, Hagan, Espy, Latell, Oelslager, Prentiss, Watts, Kearns, Mumper, Brady**

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**BILL SUMMARY**

- Reenacts the recently sunsetted Employee Ownership Assistance (EOA) Program administered by the Department of Development.
- Provides for the resunsetting of the EOA Program effective December 31, 2004.
- Declares an emergency.

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**CONTENT AND OPERATION**

**Program overview**

The bill reenacts the recently sunsetted Employee Ownership Assistance (EOA) Program that is to be administered by the Director of Development and that generally will function to assist persons seeking employee ownership of a business establishment as an *alternative to the closing or relocation* of the establishment's operations. The Director must inform local governments, labor and business organizations, and other interested parties about EOA Program services, which include (among others) feasibility study assistance, technical assistance, counseling, and help in obtaining financial assistance. The program will expire December 31, 2004. (Secs. 122.13 to 122.136; Section 2 of the bill.)

**Definitions**

The bill defines an "employee-owned corporation" as a business operation that is controlled by a board of directors that is selected by the shareholders on the basis of one vote per shareholder and in which the management rights are represented by voting stock that is owned by any of the following (sec. 122.13(B)):

- Only the employees of the operation;

- A nonprofit community development corporation;
- An employee-owned stock ownership plan any portion of which is owned by not less than 20% of those employees;
- An operation in which not less than 50% of each class of voting security is owned by an employee stock ownership trust established under an employee stock ownership plan as defined in federal law, if the employee stock ownership plan requires pass-through of voting rights on voting securities as the securities are allocated to individual participating employee accounts (see **COMMENT 1**).

Under the bill, an employee-owned corporation is the desired alternative to the *closing* or *relocation* of a business *establishment's* operations. These italicized terms are defined as follows (sec. 122.13(A), (C), and (D)):

**Closing:** the permanent cessation of an establishment's operations if that establishment employs *at least 25 persons*.

**Relocation:** the removal of all or substantially all of the industrial or commercial operations in an establishment to a new location that (1) is in Ohio or outside Ohio and (2) is 100 or more miles from the establishment's current location.

**Establishment:** any factory, plant, office, or other facility, not including a construction site or other workplace that was intended to be a temporary workplace.

### **EOA Program services**

The bill allows any individual, group of individuals, employees, employee organization, or local community affected by the relocation or closing of a business establishment to request assistance under the EOA Program in a manner prescribed by the Director of Development. Generally, upon receipt of a request for assistance, the Director can provide assistance in the evaluation of the feasibility and economic vitality of an employee-owned corporation proposal, technical and operational assistance and counseling services to persons seeking to form an employee-owned corporation, and assistance in obtaining financing for the purchase and operation of an employee-owned corporation. (Secs. 122.132(B), (C), and (E) and 122.135.)

If the Director becomes aware of the closing or relocation of a business establishment and receives a request for EOA Program assistance, the Director may conduct an *initial study* of the feasibility of establishing an employee-owned corporation to continue the operations of the affected establishment. This study also can explore the prospect of operating another business at the establishment. The Director may present the results of the initial study and information regarding

EOA Program services relative to forming an employee-owned corporation at an *informational meeting* with local community representatives, the establishment involved, affected employees, and representatives of any employee organization involved. (Sec. 122.134.)

### **Other Director of Development responsibilities**

#### **Information provision**

The bill requires the Director to inform local governments, business and labor organizations, and others in the state about the availability of EOA Program services. This task includes the collection, development, and dissemination of information useful in undertaking or promoting the establishment and successful operation of employee-owned corporations. (Secs. 122.132(A) and 122.133(B).)

#### **Coordination efforts**

In addition to publicizing the availability of the EOA Program services, the Director must coordinate with local governments, business and labor organizations, and other state agencies in obtaining information relating to the possible relocation or closing of a business establishment (sec. 122.133(B)).

The bill requires the Director to promote and coordinate local, state, and federal governmental efforts, as well as private organization efforts, assisting in the formation or operation of employee-owned corporations. The Director also may recommend appropriate legislative or executive actions to enhance the opportunities for employee-owned corporations in the state. (Sec. 122.132(F) and (G).)

#### **Staffing, forms, and rules**

The Director may employ necessary professional and technical personnel and other employees to administer the EOA Program and may create *technical and advisory boards* and request *cooperation from other state agencies* in execution of the bill's provisions. The Director must prescribe all forms for EOA Program assistance requests, publish materials describing EOA Program services, and pursuant to the Administrative Procedure Act, adopt rules governing the EOA Program's conduct. (Secs. 122.131, 122.132(H) and (I), and 122.133(A).)

#### **Annual report**

Annually, on or before the first day of February, the Director must report to the Governor and General Assembly on EOA Program services and activities for the preceding year. The report must include (1) the number, names, and locations of business establishments assisted or likely to be assisted as employee-owned

corporations, (2) recommendations on how to better operate the EOA Program, (3) information regarding the effectiveness of the EOA Program in maintaining and improving employment in the state, and (4) the number of individuals affected by the EOA Program's activities. (Sec. 122.136.)

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## COMMENT

1. Federal tax law provides certain tax exemptions for qualified pension, profit-sharing, and stock bonus plans, including employee stock ownership plans (ESOPs). The law sets criteria for "tax credit employee stock ownership plans," including the rights of the employer and the employee participants, stock voting rights, employer securities allocations, and reporting requirements.

2. The bill's provisions in proposed sections 122.13 to 122.136 are *substantively identical* to the EOA Program provisions that were formerly located in those same sections immediately prior to the "sunset" of those former provisions on December 31, 1999, by operation of Section 2 of Sub. H.B. 668 of the 120th General Assembly.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-23-99	p. 1010
Reported, S. Economic Development, Technology, & Aerospace	11-09-00	p. 2197
Passed Senate (32-0)	11-09-00	pp. 2201-2202

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