

111TH CONGRESS
1ST SESSION

S. 2914

To provide for the establishment of the United States Employee Ownership Bank, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 18, 2009

Mr. SANDERS (for himself, Mr. LEAHY, Mr. BROWN, and Mr. MENENDEZ) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To provide for the establishment of the United States Employee Ownership Bank, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “United States Em-
5 ployee Ownership Bank Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) between December 2007 and October 2009,
9 payroll employment in the United States fell by
10 8,200,000;

1 (2) between January 2000 and October 2009,
2 the manufacturing sector lost 5,617,000 jobs;

3 (3) as of October 2009, fewer than 12,000,000
4 workers in the United States were employed in the
5 manufacturing sector, the fewest number of factory
6 jobs since March 1941;

7 (4) at the end of 2008, the United States had
8 a trade deficit of more than \$695,936,000,000, in-
9 cluding a record-breaking \$268,039,800,000 trade
10 deficit with China;

11 (5) preserving and increasing decent paying
12 jobs must be a top priority of Congress;

13 (6) providing loan guarantees, direct loans, and
14 technical assistance to employees to buy their own
15 companies will preserve and increase employment in
16 the United States; and

17 (7) just as the United States Export-Import
18 Bank was created in 1934 in the midst of the Great
19 Depression, as a way to increase United States jobs
20 through exports, the time has come to establish the
21 United States Employee Ownership Bank within the
22 Department of the Treasury to preserve and expand
23 jobs in the United States.

24 **SEC. 3. DEFINITIONS.**

25 In this Act—

1 (1) the term “Bank” means the United States
2 Employee Ownership Bank, established under sec-
3 tion 4;

4 (2) the term “eligible worker-owned coopera-
5 tive” has the same meaning as in section 1042(e)(2)
6 of the Internal Revenue Code of 1986;

7 (3) the term “employee stock ownership plan”
8 has the same meaning as in section 4975(e)(7) of
9 the Internal Revenue Code of 1986; and

10 (4) the term “Secretary” means the Secretary
11 of the Treasury.

12 **SEC. 4. ESTABLISHMENT OF UNITED STATES EMPLOYEE**
13 **OWNERSHIP BANK WITHIN THE DEPART-**
14 **MENT OF THE TREASURY.**

15 (a) ESTABLISHMENT OF BANK.—

16 (1) IN GENERAL.—Before the end of the 90-day
17 period beginning on the date of enactment of this
18 Act, the Secretary shall establish the United States
19 Employee Ownership Bank, to foster increased em-
20 ployee ownership of United States companies and
21 greater employee participation in company decision
22 making throughout the United States.

23 (2) ORGANIZATION OF THE BANK.—

24 (A) MANAGEMENT.—The Secretary shall
25 appoint a Director to serve as the head of the

1 Bank, who shall serve at the pleasure of the
2 Secretary.

3 (B) STAFF.—The Director may select, ap-
4 point, employ, and fix the compensation of such
5 employees as are necessary to carry out the
6 functions of the Bank.

7 (b) DUTIES OF BANK.—The Bank is authorized to
8 provide loans, on a direct or guaranteed basis, which may
9 be subordinated to the interests of all other creditors—

10 (1) to purchase a company through an em-
11 ployee stock ownership plan or an eligible worker-
12 owned cooperative, which shall be at least 51 percent
13 employee owned, or will become at least 51 percent
14 employee owned as a result of financial assistance
15 from the Bank;

16 (2) to allow a company that is less than 51 per-
17 cent employee owned to become at least 51 percent
18 employee owned;

19 (3) to allow a company that is already at least
20 51 percent employee owned to increase the level of
21 employee ownership at the company; and

22 (4) to allow a company that is already at least
23 51 percent employee owned to expand operations
24 and increase or preserve employment.

1 (c) PRECONDITIONS.—Before the Bank makes any
2 subordinated loan or guarantees a loan under subsection
3 (b)(1), a business plan shall be submitted to the bank
4 that—

5 (1) shows that—

6 (A) not less than 51 percent of all interests
7 in the company is or will be owned or controlled
8 by an employee stock ownership plan or eligible
9 worker-owned cooperative;

10 (B) the board of directors of the company
11 is or will be elected by shareholders on a one
12 share to one vote basis or by members of the
13 eligible worker-owned cooperative on a one
14 member to one vote basis, except that shares
15 held by the employee stock ownership plan will
16 be voted according to section 409(e) of the In-
17 ternal Revenue Code of 1986, with participants
18 providing voting instructions to the trustee of
19 the employee stock ownership plan in accord-
20 ance with the terms of the employee stock own-
21 ership plan and the requirements of that section
22 409(e); and

23 (C) all employees will receive basic infor-
24 mation about company progress and have the

1 opportunity to participate in day-to-day oper-
2 ations; and

3 (2) includes a feasibility study from an objective
4 third party with a positive determination that the
5 employee stock ownership plan or eligible worker-
6 owned cooperative will generate enough of a margin
7 to pay back any loan, subordinated loan, or loan
8 guarantee that was made possible through the Bank.

9 (d) TERMS AND CONDITIONS FOR LOANS AND LOAN
10 GUARANTEES.—Notwithstanding any other provision of
11 law, a loan that is provided or guaranteed under this sec-
12 tion shall—

13 (1) bear interest at an annual rate, as deter-
14 mined by the Secretary—

15 (A) in the case of a direct loan under this
16 Act—

17 (i) sufficient to cover the cost of bor-
18 rowing to the Department of the Treasury
19 for obligations of comparable maturity; or

20 (ii) of 4 percent; and

21 (B) in the case of a loan guaranteed under
22 this section, in an amount that is equal to the
23 current applicable market rate for a loan of
24 comparable maturity; and

25 (2) have a term not to exceed 12 years.

1 **SEC. 5. EMPLOYEE RIGHT OF FIRST REFUSAL BEFORE**
 2 **PLANT OR FACILITY CLOSING.**

3 Section 3 of the Worker Adjustment and Retraining
 4 Notification Act (29 U.S.C. 2102) is amended—

5 (1) in the section heading, by adding at the end
 6 the following: “; **EMPLOYEE STOCK OWNERSHIP**
 7 **PLANS OR ELIGIBLE WORKER OWNED CO-**
 8 **OPERATIVES**”; and

9 (2) by adding at the end the following:

10 “(e) **EMPLOYEE STOCK OWNERSHIP PLANS AND EL-**
 11 **IGIBLE WORKER-OWNED COOPERATIVES.**—

12 “(1) **GENERAL RULE.**—If an employer orders a
 13 plant or facility closing in connection with the termi-
 14 nation of its operations at such plant or facility, the
 15 employer shall offer its employees an opportunity to
 16 purchase such plant or facility through an employee
 17 stock ownership plan (as that term is defined in sec-
 18 tion 4975(e)(7) of the Internal Revenue Code of
 19 1986) or an eligible worker-owned cooperative (as
 20 that term is defined in section 1042(c)(2) of the In-
 21 ternal Revenue Code of 1986) that is at least 51
 22 percent employee owned. The value of the company
 23 which is to be the subject of such plan or cooperative
 24 shall be the fair market value of the plant or facility,
 25 as determined by an appraisal by an independent
 26 third party jointly selected by the employer and the

1 employees. The cost of the appraisal may be shared
2 evenly between the employer and the employees.

3 “(2) EXEMPTIONS.—Paragraph (1) shall not
4 apply—

5 “(A) if an employer orders a plant closing,
6 but will retain the assets of such plant to con-
7 tinue or begin a business within the United
8 States; or

9 “(B) if an employer orders a plant closing
10 and such employer intends to continue the busi-
11 ness conducted at such plant at another plant
12 within the United States.”.

13 **SEC. 6. REGULATIONS ON SAFETY AND SOUNDNESS AND**
14 **PREVENTING COMPETITION WITH COMMER-**
15 **CIAL INSTITUTIONS.**

16 Before the end of the 90-day period beginning on the
17 date of enactment of this Act, the Secretary of the Treas-
18 ury shall prescribe such regulations as are necessary to
19 implement this Act and the amendments made by this Act,
20 including—

21 (1) regulations to ensure the safety and sound-
22 ness of the Bank; and

23 (2) regulations to ensure that the Bank will not
24 compete with commercial financial institutions.

1 **SEC. 7. COMMUNITY REINVESTMENT CREDIT.**

2 Section 804 of the Community Reinvestment Act of
3 1977 (12 U.S.C. 2903) is amended by adding at the end
4 the following new subsection:

5 “(1) ESTABLISHMENT OF EMPLOYEE STOCK OWNER-
6 SHIP PLANS AND ELIGIBLE WORKER-OWNED COOPERA-
7 TIVES.—In assessing and taking into account, under sub-
8 section (a), the record of a financial institution, the appro-
9 priate Federal financial supervisory agency may consider
10 as a factor capital investments, loans, loan participation,
11 technical assistance, financial advice, grants, and other
12 ventures undertaken by the institution to support or en-
13 able employees to establish employee stock ownership
14 plans or eligible worker-owned cooperatives (as those
15 terms are defined in sections 4975(e)(7) and 1042(e)(2)
16 of the Internal Revenue Code of 1986, respectively), that
17 are at least 51 percent employee-owned plans or coopera-
18 tives.”.

19 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated to the Sec-
21 retary to carry out this Act, \$500,000,000 for fiscal year
22 2010, and such sums as may be necessary thereafter.

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