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112TH CONGRESS
2D SESSION

S. 3419

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

IN THE SENATE OF THE UNITED STATES

JULY 23, 2012

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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''United States Employee Ownership Bank Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) between January 2000 and June 2012, the manufacturing sector lost 5,330,000 jobs;

(2) as of June 2012, fewer than 12,000,000 workers in the United States were employed in the manufacturing sector, the fewest number of factory jobs since May 1941;

(3) at the end of 2011, the United States had a trade deficit of more than $559,956,000,000, including a record-breaking $295,456,500,000 trade deficit with China;

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

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

(6) the time has come to establish the United States Employee Ownership Bank to preserve and expand jobs in the United States through Employee Stock Ownership Plans and worker-owned cooperatives.

SEC. 3. DEFINITIONS.

In this Act—

(1) the term ''Bank'' means the United States Employee Ownership Bank, established under section 4;

(2) the term ''eligible worker-owned cooperative'' has the same meaning as in section 1042(c)(2) of the Internal Revenue Code of 1986;

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

(4) the term ''Secretary'' means the Secretary of the Treasury.

SEC. 4. ESTABLISHMENT OF UNITED STATES EMPLOYEE OWNERSHIP BANK WITHIN THE DEPARTMENT OF THE TREASURY.

(a) ESTABLISHMENT OF BANK.—

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

(2) ORGANIZATION OF THE BANK.—

(A) MANAGEMENT.—The Secretary shall appoint a Director to serve as the head of the Bank, who shall serve at the pleasure of the Secretary.

(B) STAFF.—The Director may select, appoint, employ, and fix the compensation of such employees as are necessary to carry out the functions of the Bank.

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

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

(2) to allow a company that is less than 51 percent employee owned to become at least 51 percent employee owned;

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

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

(c) PRECONDITIONS.—Before the Bank makes any subordinated loan or guarantees a loan under subsection

(b)(1), a business plan shall be submitted to the bank that—

(1) shows that—

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

(B) the board of directors of the company is or will be elected by shareholders on a one share to one vote basis or by members of the eligible worker-owned cooperative on a one member to one vote basis, except that shares held by the employee stock ownership plan will be voted according to section 409(e) of the Internal Revenue Code of 1986, with participants providing voting instructions to the trustee of the employee stock ownership plan in accordance with the terms of the employee stock ownership plan and the requirements of that section 409(e); and

(C) all employees will receive basic information about company progress and have the opportunity to participate in day-to-day operations; and

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

(d) TERMS AND CONDITIONS FOR LOANS AND LOAN GUARANTEES.—Notwithstanding any other provision of law, a loan that is provided or guaranteed under this section shall—

(1) bear interest at an annual rate, as determined by the Secretary—

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

(i) sufficient to cover the cost of borrowing to the Department of the Treasury for obligations of comparable maturity; or

(ii) of 4 percent; and

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

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

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

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

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

(2) by adding at the end the following:

"(e) EMPLOYEE STOCK OWNERSHIP PLANS AND ELIGIBLE WORKER-OWNED COOPERATIVES.—

"(1) GENERAL RULE.—If an employer orders a plant or facility closing in connection with the termination of its operations at such plant or facility, the employer shall offer its employees an opportunity to purchase such plant or facility through an employee stock ownership plan (as that term is defined in section 4975(e)(7) of the Internal Revenue Code of 1986) or an eligible worker-owned cooperative (as that term is defined in section 1042(c)(2) of the Internal Revenue Code of 1986) that is at least 51 percent employee owned. The value of the company which is to be the subject of such plan or cooperative shall be the fair market value of the plant or facility, as determined by an appraisal by an independent third party jointly selected by the employer and the

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

"(2) EXEMPTIONS.—Paragraph (1) shall not apply—

"(A) if an employer orders a plant closing, but will retain the assets of such plant to continue or begin a business within the United States; or

"(B) if an employer orders a plant closing and such employer intends to continue the business conducted at such plant at another plant within the United States.".

SEC. 6. REGULATIONS ON SAFETY AND SOUNDNESS AND PREVENTING COMPETITION WITH COMMERCIAL INSTITUTIONS.

Before the end of the 90-day period beginning on the date of enactment of this Act, the Secretary of the Treasury shall prescribe such regulations as are necessary to implement this Act and the amendments made by this Act, including—

(1) regulations to ensure the safety and soundness of the Bank; and

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

SEC. 7. COMMUNITY REINVESTMENT CREDIT.

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

"(l) ESTABLISHMENT OF EMPLOYEE STOCK OWNERSHIP PLANS AND ELIGIBLE WORKER-OWNED COOPERATIVES.—In assessing and taking into account, under subsection (a), the record of a financial institution, the appropriate Federal financial supervisory agency may consider as a factor capital investments, loans, loan participation, technical assistance, financial advice, grants, and other ventures undertaken by the institution to support or enable employees to establish employee stock ownership plans or eligible worker-owned cooperatives (as those terms are defined in sections 4975(e)(7) and 1042(c)(2) of the Internal Revenue Code of 1986, respectively), that are at least 51 percent employee-owned plans or cooperatives.".

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary to carry out this Act, $500,000,000 for fiscal year 2013, and such sums as may be necessary thereafter.

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