



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5924

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SYNOPSIS AS INTRODUCED:

New Act

Creates the Economic Stabilization Trust Act. Establishes the Economic Stabilization Trust, governed by a board of trustees consisting of the Director of Commerce and Economic Opportunity and gubernatorial appointees, to consider and approve or deny applications for financial assistance to businesses that cannot obtain sufficient financial assistance from financial institutions and public development agencies.

LRB095 17691 JAM 43766 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Economic Stabilization Trust Act.

6 Section 5. Definitions. As used in this Act:

7 "Board" means the board of trustees of the Economic
8 Stabilization Trust.

9 "Trust" means the Economic Stabilization Trust.

10 Section 10. Establishment. The Economic Stabilization
11 Trust is established within State government.

12 Section 15. Board of Trustees; officers; duties;
13 liabilities; public records.

14 (a) The Trust shall be governed by and its powers exercised
15 by a board of trustees that shall consist of the Director of
16 Commerce and Economic Opportunity and 4 persons appointed by
17 the Governor, who shall together be experienced in the
18 financial analysis of businesses, turnarounds of troubled
19 businesses, the management of businesses, and the organization
20 and operation of employee-owned businesses; provided that each
21 trustee shall be experienced and knowledgeable in at least one

1 of those areas. Each trustee appointed by the Governor shall
2 serve for 4 years, except that in making the initial
3 appointments the Governor shall appoint one trustee to serve
4 for 2 years, one trustee to serve for 3 years, and 2 trustees
5 to serve for 4 years. Any person appointed to fill a vacancy in
6 the office of trustee shall serve for only the unexpired term
7 of that trustee. A trustee may be reappointed. A trustee may be
8 removed from his appointment by the Governor for cause. The
9 Governor shall from time to time designate one trustee as
10 chairperson of the board of trustees.

11 (b) Three of the trustees of the Trust constitute a quorum,
12 and the affirmative vote of 3 trustees is necessary for any
13 action to be taken by the Trust.

14 (c) Trustees shall receive no compensation, but each is
15 entitled to reimbursement for his or her actual and necessary
16 expenses incurred in the performance of his or her official
17 duties.

18 (d) The Trust may invest in, purchase from, sell to, borrow
19 from, loan to, contract with, or otherwise deal with any person
20 or entity in which any trustee is in any way interested or
21 involved; provided that the interest or involvement is
22 disclosed in advance to the members of the board and recorded
23 in the minutes of the board; and provided further that no
24 trustee having such an interest or involvement may participate
25 in any decision of the board relating to that person or entity.

26 (e) The trustees shall elect a secretary and treasurer and

1 may elect or appoint other officers as they may deem necessary,
2 none of whom shall be required to be members of the board. The
3 secretary shall keep a record of the proceedings of the board
4 and shall be custodian of all books, documents, and papers
5 filed by the trustees and of its minute book and seal. The
6 secretary shall cause copies to be made of all minutes and
7 other records and documents of the Trust and shall certify that
8 those copies are true copies, and all persons dealing with the
9 Trust may rely upon the certification. The treasurer shall be
10 the chief financial and accounting officer of the Trust and
11 shall be in charge of its moneys, books of account, and
12 accounting records.

13 (f) All officers and employees of the Trust having access
14 to its cash and negotiable securities shall give bond to the
15 Trust at its expense in such amounts and with such surety as
16 the board may prescribe. The persons required to give bond may
17 be included in one or more blanket or scheduled bonds.

18 (g) Trustees shall not be liable to the State or to any
19 other person as a result of their activities, whether
20 ministerial or discretionary, as trustees, except for willful
21 dishonesty or intentional violations of the law. The Trust may
22 purchase liability insurance for trustees, officers, and
23 employees and may indemnify those persons against claims of
24 others.

25 (h) Any documentary materials, data, or conversations
26 whatsoever made or received by any trustee or employee of the

1 Trust and consisting of, or to the extent that the materials,
2 data, or conversations consist of, trade secrets or commercial
3 or financial information regarding the operation of any
4 business conducted by an applicant for assistance that the
5 Trust is empowered to render or regarding the competitive
6 position of the applicant in a particular field of endeavor,
7 shall not be deemed public records of the Trust and
8 specifically are exempt from the Freedom of Information Act.
9 Any discussion or consideration of an applicant's trade secrets
10 or commercial or financial information may be held by the
11 trustees in a closed meeting, but the purpose of any such
12 closed meeting shall be set forth in the official minutes of
13 the Trust and no business that is directly related to such
14 purpose shall be transacted nor shall any vote be taken during
15 the closed meeting.

16 Section 20. Trust employees. The board shall employ an
17 executive director to serve as the chief executive,
18 administrative, and operational officer of the Trust. The
19 executive director shall attend meetings of the Trust, and
20 shall direct the resources and staff of the Trust to achieve
21 the purposes of this Act.

22 Section 25. Trust purposes; loan loss standards.

23 (a) The purposes of the Trust are:

24 (1) To provide flexible high risk financing necessary

1 to implement a change of ownership, a corporate
2 restructuring, or a turnaround plan for an economically
3 viable but troubled business that faces the likelihood of a
4 large employment loss, plant closure, or failure without a
5 change of ownership, corporate restructuring, or
6 turnaround plan. The Trust may also provide assistance to
7 firms in specific mature industries for the purpose of
8 technological investment or upgrading of management
9 operations in order for the business to maintain future
10 economic stability. The financial participation of the
11 Trust is aimed at supplementing private financial
12 institutions and public economic development agencies when
13 those institutions and agencies are not able to provide all
14 the financing or bear all of the risk necessary to transfer
15 ownership, restructure, or turnaround a business in a
16 situation where the business might otherwise fail or
17 greatly reduce its employment.

18 (2) To provide flexible high risk financing in
19 connection with the start-up of employee-owned businesses
20 or the implementation of employee-ownership projects. The
21 financial participation of the Trust is aimed at
22 supplementing private financial institutions and public
23 economic development agencies when those institutions and
24 agencies are not able to provide all the financing or bear
25 all of the risk necessary to start-up an employee-owned
26 business or implement an employee-ownership project. Not

1 less than 10% of the financing provided pursuant to this
2 Act shall be targeted to businesses that are employee-owned
3 businesses; provided that any portion of that 10% that is
4 not expended for the purposes of employee-owned business
5 may be expended for other purposes authorized in this Act.

6 (b) In the performance of its purposes, the Trust shall be
7 deemed to be investing not on the basis of a direct financial
8 return on its investment but in order to reduce the social
9 costs of a large employment loss, plant closure or business
10 failure and to obtain the financial benefits the State receives
11 from maintaining the operations and employment of viable
12 businesses. The Trust shall not be held to the loan loss
13 standards of private commercial lenders.

14 Section 30. Trust powers. The Trust shall have the power
15 to:

16 (1) Make, amend, and repeal rules for the management of
17 its affairs.

18 (2) Adopt an official seal.

19 (3) Sue and be sued, in its own name.

20 (4) Make contracts and execute all instruments
21 necessary or convenient for the carrying out of its
22 business.

23 (5) Enter into agreements or other transactions with
24 any federal, State, or local government agency.

25 (6) Acquire real property, or an interest therein, by

1 purchase or foreclosure when acquisition is necessary or
2 appropriate to protect or secure any investment or loan in
3 which the Trust has an interest; to sell, transfer, and
4 convey any real property to a buyer, and, in the event a
5 sale, transfer, or conveyance cannot be effected with
6 reasonable promptness or at a reasonable price, to lease
7 the property to a tenant.

8 (7) Invest funds not required for immediate
9 disbursement in investments as may be lawful for
10 fiduciaries in the State.

11 (8) Appoint officers, employees, consultants, agents,
12 and advisors and prescribe their duties and fix their
13 compensation within the limitations provided by law.

14 (9) Appear in its own behalf before boards,
15 commissions, departments, or other agencies of local,
16 State, or federal government.

17 (10) Consent, whenever it deems it necessary or
18 desirable in the fulfillment of the purposes of this Act,
19 to the modification with respect to rate of interest, time
20 of payment of any installment of principal or interest, or
21 any other terms of any contract or agreement of any kind to
22 which the Trust is a party.

23 (11) Apply for and accept grants, donations, and
24 bequests of money, property, labor, or other things of
25 value to be held, used, and applied for the purposes of
26 this Act; receipt of donations and grants shall be detailed

1 in the annual report of the Trust, including the identity
2 of the donor, the nature of the transaction, and any
3 conditions attached thereto.

4 (12) Make loans to or otherwise finance or invest in
5 any business or person seeking to purchase a business to
6 further the purposes of this Act; provided that loans or
7 investments comply with the provisions of this Act.

8 (13) Establish and collect fees, charges, and interest
9 rates the Trust determines reasonable.

10 (14) Require, by contract in any financing agreement or
11 otherwise, specific operational activities, financial
12 actions, or management changes as conditions for the
13 receipt of any loan, financing, or investment from the
14 Trust.

15 (15) Do any and all things necessary or convenient to
16 carry out its purposes and exercise the powers expressly
17 granted under this Act.

18 Section 35. Application for financing from Trust; review;
19 approval or denial. Any business or person seeking financing
20 from the Trust shall submit to the executive director a
21 complete application for financing and any other information
22 the board shall request. The board shall review the application
23 for financing and, based upon the information submitted and any
24 additional investigation the trustees may deem necessary,
25 approve or deny the application subject to the following

1 requirements:

2 (1) Before approving an application for assistance in
3 connection with the purchase of a troubled business, the
4 board shall determine and incorporate in its minutes that:

5 (A) the business is likely to experience a large
6 loss of employment, plant closure, or failure without
7 the loan financing or investment by the Trust;

8 (B) the business within a specific mature industry
9 requires assistance for the purpose of technological
10 investment or upgrading of management operations in
11 order for the business to maintain future economic
12 stability;

13 (C) the business or person seeking to purchase the
14 business has taken or will take actions the board deems
15 necessary to insure the business has a reasonable
16 chance to continue as a successful business,
17 including, but not limited to, changes in its
18 operations, financing, or management, and that those
19 actions are included as a condition for financing by
20 the Trust in the financing agreement; and

21 (D) the business or person seeking to purchase the
22 business has made diligent efforts to obtain the
23 financing necessary to continue its operations or
24 transfer ownership of the business from private
25 financial institutions and public economic development
26 agencies, and such financing is unavailable or has been

1 offered on terms that would prevent the successful
2 continuation or change in ownership of the business.

3 (2) Before approving an application for assistance in
4 connection with an employee-owned business or an
5 employee-ownership project, the board shall consult with
6 the executive director and after receiving the
7 recommendation of the executive director, shall determine
8 and incorporate in its minutes that:

9 (A) the business or person seeking assistance has
10 taken or will take actions the board and the executive
11 director deem necessary to insure that the
12 employee-ownership project has a reasonable chance to
13 succeed; and

14 (B) except with respect to assistance for
15 pre-feasibility and feasibility studies, that the
16 business or person has made diligent efforts to obtain
17 the financing necessary to institute or implement the
18 employee-ownership project from private financial
19 institutions and public economic development agencies,
20 and that financing is unavailable or has been offered
21 on terms that would prevent the successful institution
22 or implementation of the project.

23 Section 40. Annual report; audit.

24 (a) The Trust shall annually submit a complete and detailed
25 report of the Trust's activities within 90 days after the end

1 of each fiscal year to the Governor, to the Clerk of the House
2 of Representatives, and to the Secretary of the Senate. The
3 report shall include (i) all the businesses or persons that
4 received financing from the Trust, (ii) the number of direct
5 jobs created, saved, or maintained, (iii) the indirect
6 employment created, saved, or maintained, (iv) the location and
7 wage level of direct jobs created, saved, or maintained, and
8 (v) the fiscal benefits to the State in the form of tax
9 revenues generated and social welfare expenditure avoided as a
10 result of the business and employment maintained by the Trust.

11 (b) The Trust is subject to a biennial audit by the Auditor
12 General.