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Did DCED recover money from a bankrupt company?

Summary: *Policy Brief Vol. 17, No. 19* discussed a company that received state economic development subsidies but later filed for bankruptcy. The Pennsylvania Department of Community and Economic Development (DCED) said it would try to recover the money. Four years later, where does the matter stand?

In 2012, in exchange for retaining 70 jobs and creating 341 new jobs at the former Sony facility in Westmoreland County manufacturing renewable energy batteries, Aquion received an economic development package that included a $2 million Alternative Clean Energy grant; a $5.6 million Opportunity Grant; a $1 million Discovered and Developed in PA grant; a $3 million Alternative Clean Energy loan and a $5 million Machinery and Equipment Fund (MELF) loan. In addition, $2.2 million from Pennsylvania Industrial Development Authority (PIDA)-Multi was awarded to customize space in the facility for the company.

The promises for growth ended when the company filed for bankruptcy in March 2017. DCED officials stated they "[would] pursue full recovery of [the development] money in the bankruptcy reorganization proceeding" and "[were] prepared to take whatever steps are necessary and legal under the bankruptcy code to recover our loans." As we noted at the time, "recovering funds from companies that are still operating but falling well short of their sales and job goals could be very difficult—but the situation is even more problematic in the case of bankruptcy." According to a September 2017 news article, the company announced it was terminating its lease at the facility and moving overseas.

How successful has DCED been in its efforts to recover some of the funds received by Aquion? Based on an April 8 response to an open records request, DCED said $1.2 million has been paid back. In February 2019 a payment of $761,612 was applied to the MELF loan and $463,387 was applied to the Alternative Clean Energy loan. That's 7.4 percent of the $16.6 million in grants and loans the company directly received. Time and legal expense likely reduced the net amount DCED received.

Since the Aquion lease termination, the state has put still more public money into the facility. Based on DCED's Investment Tracker, the facility received an $88,425 grant

from the Industrial Sites Reuse cleanup program and an $8 million loan from the Business in Our Sites program. A March 2019 press release stated the Commonwealth Financing Authority approved the loan to cover the installation of 760,837 square feet of roofing.

These awards were followed by a $2.25 million PIDA loan in December 2020 to customize space at the facility for another manufacturer that has a presence in Southwestern Pennsylvania and sounds quite similar to the Aquion deal. The loan announcement came almost 12 years to the day when Sony announced it was beginning the process of shuttering operations at the facility. A news article on the closure reported that Sony "received $40 million in public incentives" at what once was a Volkswagen vehicle assembly facility.

Two efforts to document the state's actions in recovering economic development subsidies from companies have been undertaken since the Aquion lease termination.

First, there was an update in a December 2018 news release from the Pennsylvania Auditor General's Office to a 2014 audit which examined three job-creation programs. The audit pointed out penalties for companies that accepted subsidies but failed to deliver on job promises which included increases in interest rates on loans and recouping some or all of a grant, which the audit referred to as a "clawback." In the time period covered in the audit (July 1, 2010 through June 30, 2013) DCED imposed interest rate increases on 46 companies that received a loan and penalties of $10.9 million against 72 businesses receiving grants. At the time of the audit's publication $4.5 million of the $10.9 million had been collected; $1.6 million in payments were outstanding; $0.5 million had been written off and $4.2 million was with DCED legal staff (presumably meaning litigation). Both DCED and the Auditor General's Office characterized the chances of recovering money from a bankrupt recipient to be minimal.

The AG's office's news release stated DCED had adopted most of the 2014 audit's 13 recommendations, "including holding businesses accountable for creating and/or retaining the number of jobs pledged." The release cited two companies that received grants but closed and had to return a total of $350,000.

Second, a report by the Independent Fiscal Office (IFO) in January 2020 evaluated DCED under the provisions of Act 48 of 2017. That act requires an examination of agencies once every five years and "directs the IFO to evaluate and develop performance measures for each agency program or line-item appropriation" in an effort to develop a performance-based budget.

The report examined business attraction and financing by looking at a grant program and two loan programs from fiscal years 2014-15 through 2019-20. Expenditures from the programs in that time period totaled $196.5 million. Clawed back funds totaled $5.9 million and were exclusively from the grant program.

Since the money is recaptured by DCED it likely becomes part of the funds it has to distribute.

But it should be returned to the general fund and used to lower taxes. Significant growth in returned funds could result in taxpayers and legislators to push for less reliance on government and more reliance on the marketplace to drive business development. Substantial tax dollar savings could be realized if the state decided to drastically reduce its spending on government-directed and subsidized development. If funds grew perhaps taxpayers would demand that the marketplace drive a greater share of development.

Rather than trying to pick winners and losers and providing large amounts of money in questionable subsidies, the commonwealth needs to address its business tax structure, its regulatory environment and generally improve the state as place to start and run a business. These recommendations are not new nor unreasonable.

But sadly they do face an uphill fight in Pennsylvania. Continuing losses of congressional representatives ought to be a clear signal that something is amiss. The state's perennially relative slow economic growth and employment gains compared to much better performing states should have long since brought about a rethinking of the role of government in the economy.

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