ADVANCE NOTICE PROGRAMS AND PROPOSALS IN THE UNITED STATES

Advance notice legislation has been proposed in at least 20 States over the years. At least five States have legislative provisions calling for advance notice (either voluntary or mandatory.) Aside from advance notice, several States have other laws related to plant closings: some require continuation of health insurance coverage for workers after layoffs or closings; although this is usually offered at the employees' expense, one State (Connecticut) requires the employer to pay for continued health insurance benefits for workers affected by certain plant closings or relocations. Several States offer technical and financial assistance to aid employees in buying plants that are closing. Some States also provide assistance to troubled firms to help them stay in business, and thus avoid shutting down or laying off people. Finally, a number of State legislatures have authorized special studies or commissions on plant closing issues.

At the Federal level, bills calling for advance notice of plant closings or large layoffs have been introduced in every Congress since 1973. Aside from a purely voluntary notice provision in the Trade Act of 1974, no legislation for advance notice has ever been enacted, and only one bill has ever been considered on the floor of either House. This bill, H.R. 1616 in the 99th Congress, was defeated in the House in November 1985 by a vote of 208 to 203.

Existing State advance notice laws, and Federal proposals and activities related to advance notice are discussed briefly below. Readers interested in more detail about the State and local programs can find it in appendix B.

State and Local Programs

States with laws calling for advance notice include Maine, Wisconsin, Massachusetts, Michigan, and Maryland. The Maine and Wisconsin laws require firms to provide notice, although penalties for not complying are modest. The Massachusetts notice law is voluntary, although firms receiving certain kinds of State or State-backed financial assistance are to accept its terms. The Michigan and Maryland programs are entirely voluntary.

Maine and Wisconsin have required advance notice for more than a decade. The Maine program requires firms to provide 60 days' notice and severance pay when closing or relocating covered facilities employing 100 or more people. Wisconsin requires 60 days' advance notice when a firm employing at least 100 or more workers within the State plans a merger, liquidation, disposition, or relocation that would cause a cessation of business activities affecting 10 or more people. Penalties for not complying with the two laws are modest: the most a firm can be fined in Maine is $500; in Wisconsin, the maximum fine is $50 per affected employee.

Under the Massachusetts mature industries legislation, adopted in 1984, all firms are urged to adopt a voluntary standard for corporate behavior on advance notice. Some firms (those applying for financial aid from certain agencies) must agree to accept the standard as a condition for aid. This requirement is quite flexible, however: in accepting the "social compact," employers agree to make "a good faith effort" to provide employees with the "maximum practicable combination" of advance notice and maintenance of income and health insurance benefits. The law does not state a minimum notice standard, but does say that the State "expects" firms to provide "at least 90 days' notice or equivalent benefits. " The law also calls on companies to help reemploy the workers. An evaluation of the program is in progress.

Maryland's law, passed in 1985, established a quick response program and also called for voluntary guidelines to employers who are reducing operations. The law and the guidelines (issued in June 1986) urge at least 90 days' notice when possible and appropriate, and continuation of benefits; the guidelines also identify contact points for State assistance. The voluntary advance notice in Michigan law has

not been actively implemented, and it appears that the State has hardly ever been officially given notice of a closing.

A few localities have advance notice ordinances. A Philadelphia ordinance, adopted in 1982, requires firms to provide 60 days' notice when closing down or moving to a location beyond commuting distance from the city. Vacaville, California, adopted an ordinance in 1984 that requires firms relocating to a special redevelopment area who apply for certain local development assistance to agree to provide at least 3 months' advance notice, if possible. The ordinance will expire in January 1987 unless extended.

Existing and Proposed Federal Programs

Trade Act of 1974

Section 283 of the Trade Act urges firms moving facilities to foreign countries to provide 60 days' notice. Specifically, the section says:

> Before moving productive facilities from the United States to a foreign country, every firm should:
> (1) provide notice of the move to its employees who are likely to be totally or partially separated as a result of the move at least 60 days before the date of such move, and
> (2) provide notice of the move to the Secretary of Labor and the Secretary of Commerce on the day it notified employees under paragraph (1).[g8]

The law goes onto state that it is the "sense of the Congress" that such firms should: 1) apply for and use adjustment assistance; 2) offer employment opportunities (if any exist) to its employees who are affected by the move; and 3) "assist" in relocating employees to other areas in the United States where employment opportunities exist.

The voluntary notice provisions in Section 283 have not been widely publicized. Officials at the Department of Labor told OTA that they were not aware of any firms moving abroad that first gave formal notice to the Department. It is not known how many of these firms have given notice to their employees.

9619 u.S.C. 2394 (public Law 93-618, Title II, Section 283)

Data on Plant Closings and Permanent Layoffs

Section 462(e) of the Job Training Partnership Act calls on the Secretary of Labor to develop and maintain statistical data on plant closings and permanent layoffs. Specific kinds of information to be collected include data on the number of closings, the number of workers displaced, the location of affected industries, and the types of industries involved.

The Bureau of Labor Statistics is in the process of establishing a plant closing databank, through contracts with State employment agencies. Participating States will review initial claims for unemployment insurance (UI) to identify cases where 50 or more claims are filed from employees at a single firm over a 3-week period. The State will then call the firm to verify whether a layoff or closing has occurred and the reasons for the closing. When a closing or layoff is verified, UI claims data will be used to track the status of these workers through the duration of UI benefits.

The law calls for publication of a report on plant closings each year. However, progress in establishing the databank has been slow, reflecting delays in funding for the program, and no report has been issued to date, In fiscal year 1984, Congress appropriated $1 million for an initial program to develop plant closing information based on unemployment insurance data from eight States. In fiscal year 1985, Congress appropriated $5 million for extension of the program to all States; the Administration proposed a rescission of this money, but Congress did not act on the proposal. For fiscal year 1986, $4,785,000 was made available for the plant closing data program, a figure that reflects the Gramm-Rudman-Hollings reduction. It is expected that an initial report covering plant closings and layoffs in 12 States from January to December 1986 will be issued in the spring of 1987. A nationwide study, covering most States, is not expected until sometime in fiscal year 1988.

Secretary's Commission on Plant Closings

Secretary of Labor William Brock appointed a Task Force on Economic Adjustment and Worker Dislocation in October 1985. The 21-member task force is to report back to the Secretary in December 1986. The Task Force has established subcommittees in four areas—the nature and identification of the problem, public policy responses, private responses, and the foreign experience.

Legislative Proposals

Legislation calling for some form of prenotification or advance notice of plant closings has been proposed in every Congress since 1973, but it was not until 1985, in the 99th Congress, that a bill was reported out of a full committee of either House. The House Committee on Education and Labor reported H.R. 1616 in October 1985. After significant revisions were made on the House floor, the bill was defeated by a vote of 203 to 208 on November 21, 1985.97

The version of H.R. 1616 that was reported out of the Education and Labor Committee would have required employers of 50 or more people to provide 90 days' written notice before ordering plant closings or mass layoffs that would result in an employment loss for 50 or more employees at any site during any 30-day period, An employer could proceed with the layoff or closing before the end of the 90-day period in the case of "unavoidable" business circumstances.

The version of the bill that came to a final House vote on November 21, 1985, after amendment on the House floor, would also have required 90 days' notice, but in fewer circumstances than the committee-reported bill.98 For example, the definition of an employer falling under the bill's coverage was narrowed to include 50 or more full-time employees (or 50 or more employees working a total of 2,000 hours a week without overtime) "at a single site. " These employers would be required to provide 90 days' notice of plant closings or mass layoffs involving an employment loss of: 1) either 30 percent of the employees or 50 employees (whichever number was greater) of any employer at any site during any 30-day period; or 2) 100 or more employees at any site during a 30-day period, Employers could order the plant closing or layoff before the end of the 90-day period as a consequence of "unforeseeable" business circumstances.

The committee-reported version of H,R. 1616 also contained consultation provisions that were deleted on the House floor. In this version, the bill would have required employers to consult "in good faith" with an employee representative (if one existed) for the "purpose of agreeing to a mutually satisfactory alternative to or modification" of a proposed plant closing or layoff. "Good faith" consultation would include providing the employee representative with relevant information needed to thoroughly evaluate the proposed plant closing or layoff or to evaluate the alternatives or modifications.[gg]

The committee-reported version of the bill also proposed to give the Labor Department a direct role in enforcement, requiring the Secretary of Labor to investigate complaints that an employer had violated the notice and consultation provisions of the bill. On finding that the allegations had merit, the Secretary would then petition a U.S. District Court for injunctive relief. The court could have ordered several forms of relief, such as requiring the employer to give notice, extending the consultation period beyond 90 days, and requiring reinstatement with back pay and benefits, The version of the bill voted on by the House did not contain provisions for injunctive action.

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[97] As originally introduced, H .R. 1616 was entitled the "Labor-Management Notification and Consultation Act of 1985"; the version of H. R. 1616 that was voted down by the House was entitled the "Community and Dislocated Worker Notification Act, "

[98] For th, debate on the bill, see the ***Congressional Record,*** Nov. 12, 1985, pp. H9992-H1OOO8; Nov. 14, 1985, pp. H10213-H0242: Nov. *21, 1985,* pp. H104665-H10487.

[99] For a discussion of objections of employers to these requirements, see the earlier sections entitled "Avoiding Plant Closings and Layoffs" and "Labor Market Flexibility y and Collective Dismissal Laws in Western Europe. "

Both versions of the bill specified that employees could sue noncomplying employers for back pay and related benefits for each day of violation, up to 90 days. Employees or other persons could seek to enforce this liability by bringing suit in a U.S. District Court. The courts also could award reasonable attorneys' fees to be paid by the defendant, together with the costs of the action. The committee's version of the bill would have allowed the courts to award both general and punitive damages, if it found such an award appropriate. This provision for punitive damages was deleted from the version of the bill voted on by the House. Also, the final version specified that the bill's procedures for taking civil actions against employers would be the exclusive remedies for violations of the bill.