

ASSEMBLY, No. 2688

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1997

By Assemblymen GARRETT, CORODEMUS, Assemblywoman Heck, Assemblymen Kelly, Wolfe, Azzolina, Geist, Blee, Augustine, Arnone, T. Smith, Holzapfel, Moran, Gregg, Cottrell, Gibson, Asselta, LeFevre, Assemblywoman Crecco, Assemblymen Lance, Romano and Doria

1 AN ACT concerning export financing and amending P.L.1995, c.209.

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3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

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6 1. Section 2 of P.L.1995, c.209 (C.34:1B-94) is amended to read
7 as follows:

8 2. The Legislature finds and declares that:

9 a. Currently, despite the existence of banks with active
10 international export departments, small and medium-sized businesses
11 in New Jersey find it difficult to obtain pre-export financing and other
12 export finance services needed to defray the costs of potentially
13 profitable orders.

14 b. Although there is currently a State-sponsored export working
15 capital program for small and medium-sized businesses and an export
16 loan guarantee program offered in conjunction with participating
17 banks, relatively few transactions have been approved under these
18 programs.

19 c. The public interest calls for encouraging the growth of exports
20 and small and medium-sized businesses as well as providing
21 stimulation to the economy and to employment by the creation of an
22 export financing company supported by both public and private funds.

23 d. The public funding of an export financing company shall be
24 accomplished by the purchase of stock or an interest in the company,
25 as the case may be, by the New Jersey Economic Development
26 Authority and other public entities involved in international export
27 markets, such purchases to be specifically limited as to the percentage
28 of participation.

29 e. The capitalization of the export financing company would be
30 so structured that the New Jersey Economic Development Authority

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 and other public entities would incur minimal risk on their investment,
2 with private investors assuming most of the risk and earning more of
3 the profits should the new venture prove successful.

4 (cf: P.L.1995, c.209, s.2)

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6 2. Section 3 of P.L.1995, c.209 (C.34:1B-95) is amended to read
7 as follows:

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3. As used in this act:

9 "Authority" means the New Jersey Economic Development
10 Authority, established pursuant to section 4 of P.L.1974, c.80
11 (C.34:1B-4).

12 "Commissioner" means the Commissioner of Commerce and
13 Economic Development.

14 "Department" means the Department of Commerce and Economic
15 Development.

16 "Export financing company" means a private corporation or limited
17 liability company incorporated or organized for the purpose of
18 financing the export activities of small or medium-sized businesses.

19 "Limited liability company" means a company organized pursuant
20 to the "New Jersey Limited Liability Company Act," P.L.1993, c.210
21 (C.42:2B-1 et seq.).

22 "Small or medium-sized business" means a business enterprise,
23 which has its principal place of business in this State, is independently
24 owned and operated as a sole proprietorship, partnership [or],
25 corporation, or limited liability company with a level of gross income
26 from operations defined by the authority as a small or medium-sized
27 business.

28 (cf: P.L.1995, c.209, s.3)

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30 3. Section 4 of P.L.1995, c.209 (C.34:1B-96) is amended to read
31 as follows:

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4. The authority is authorized, notwithstanding any law to the
33 contrary, to invest such moneys from the "Economic Recovery Fund,"
34 established pursuant to section 3 of P.L.1992, c.16 (C.34:1B-7.12), or
35 from other export or business assistance programs administered by the
36 authority, as may be available and which the authority deems
37 appropriate for the purposes of this act, in an export financing
38 company, hereinafter "the company," to be incorporated or organized
39 pursuant to the provisions of this act, which, together with those
40 investments which may be made in the stock or interest of the
41 company by other public entities involved in international export
42 markets that may include, but not necessarily be limited to, the
43 Delaware River Port Authority and the Port Authority of New York
44 and New Jersey, shall be at a minimum amount to be determined by the
45 Export Finance Company Advisory Council established pursuant to
46 section 7 of this act. The moneys shall be used for the purchase of

1 stock or an interest in the company, provided that the class of stock or
2 interest purchased by the authority and other public entities shall be of
3 such type and character as to require the company to repay the
4 investment of funds from the authority and other public entities prior
5 to the repayment of funds from private sources, but in no event shall
6 the amount of such stock or interest purchased by the authority and
7 other public entities exceed 49% of the total outstanding stock or total
8 shared interest of the company. The authority is authorized in its
9 discretion to sell or otherwise dispose of the stock or interest
10 purchased by the authority as shall be in the interest of the authority
11 but the authority shall sell or otherwise dispose of the stock or interest
12 no later than three years after the date of purchase.

13 Nothing in this act shall be construed to preclude the company from
14 being organized as a limited liability company or to preclude the
15 authority and other public entities involved in international export
16 markets from purchasing an interest in such a limited liability company
17 provided that the interest purchased by the authority and other public
18 entities shall not exceed 49 percent of the total shared interest of the
19 company, and provided that the operating agreement of the company
20 grants the authority and any other public entity the right to resign and
21 receive a distribution, representing the fair value of the authority's or
22 public entity's interest in the company, prior to the resignation of and
23 distribution to any private members.

24 (cf: P.L.1995, c.209, s.4)

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26 4. Section 5 of P.L.1995, c.209 (C.34:1B-97) is amended to read
27 as follows:

28 5. In order to qualify as an export financing company eligible to
29 be the subject of an investment by the authority and by the other public
30 entities involved in international export markets, a company shall:

31 a. Have a board of directors or board of trustees appropriate to
32 the form of incorporation or organization of the company consisting
33 of: (1) the commissioner and the chairman of the authority, who shall
34 be members ex officio; and (2) representatives of export trading
35 companies, banking and other financial institutions, and other
36 representatives of the private sector, who shall be selected by private
37 stockholders or members, and who shall constitute the majority of the
38 membership of the board.

39 b. Retain the services of an independent commercial auditor:

40 (1) to determine the extent to which funds made available to the
41 company for its purposes have been expended in a manner that is
42 consistent with the purposes of this act and the charter or operating
43 agreement of the company; and

44 (2) to prepare and submit to the Legislature, the State Treasurer,
45 the authority and the other public entities participating in the purchase
46 of stock or an interest in the company, an independent certified

1 statement annually containing the findings and determinations of such
2 auditor.

3 c. In connection with the investment of authority moneys in the
4 company pursuant to this act, solicit other forms of support, such as
5 grants from the federal government or from other public and private
6 sources, and make available its stock or a shared interest for purchase
7 by private entities.

8 (cf: P.L.1995, c.209, s.5)

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10 5. Section 7 of P.L.1995, c.209 (C.34:1B-99) is amended to read
11 as follows:

12 7. a. There is established an Export Finance Company Advisory
13 Council in, but not of, the Department of Commerce and Economic
14 Development. The council shall be made up of eleven members: one
15 shall be the Commissioner of Commerce and Economic Development,
16 or the commissioner's designee; one shall be the Chairman of the New
17 Jersey Economic Development Authority, or the chairman's designee;
18 three public members shall be appointed by the Governor; three public
19 members shall be appointed by the President of the Senate; and three
20 public members shall be appointed by the Speaker of the General
21 Assembly, one of whom shall be designated by the Speaker as chair of
22 the council. The appointment of the members shall take place within
23 60 days of the effective date of this act. The appointee of the Speaker
24 of the General Assembly designated as chair of the council shall
25 convene the council as soon as is practicable following the
26 appointment of at least six public members to the council.

27 b. The members of the council shall serve without compensation.

28 c. The council is authorized, empowered and directed to:

29 (1) Develop a form of organization and a plan of operation for the
30 export financing company consistent with the purposes of this act. In
31 so doing the council shall consider, but not be limited to, the form of
32 organization, plan of operation and experiences of local and regional
33 business partnerships organized jointly by the public and private
34 sectors in the State for business development purposes.

35 (2) Seek out and gain commitments from persons, natural and
36 otherwise, to be initial investors in ~~[and]~~, incorporators of or founding
37 members of the export financing company.

38 (3) Cooperate and coordinate its efforts at gaining public and
39 private sources of equity capital for the establishment of the company
40 with the Department of Commerce and Economic Development.

41 (4) Investigate the feasibility of gaining additional public sources
42 of equity capital for the establishment of the company from sources
43 which may include, but need not be limited to, other departments and
44 agencies of this State and in other states which are engaged in
45 economic development and which seek to cooperate with the council
46 to assist it in the accomplishment of its mission.

