

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:

32 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.

1       (5) Continue to interact with and to monitor the export finance  
2       company, as well as provide advisory input, during and subsequent to  
3       its creation and expansion.

4       d. Within one year of the effective date of this act, the council  
5 shall provide the Governor and the Legislature with information  
6 concerning the results of its efforts under subsection c. of this section,  
7 the status of the export financing company and the implementation of  
8 the goals of this act.

9       e. Nothing in this act shall prohibit public members of the council  
10       from being among those who serve on the export finance company  
11       board of directors or board of trustees, as appropriate to its  
12       organizational charter or operating agreement.

13 (cf: P.L.1995, c.209, s.7)

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15       6. This act shall take effect immediately.

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18                               STATEMENT

19  
20       The Export Finance Company Advisory Council (hereinafter,  
21 "council"), which was formed pursuant to the "Export Financing  
22 Opportunities Act," P.L.1995, c.209, to develop a form of  
23 organization and a plan of operation for the proposed Export Finance  
24 Company (hereinafter, "company"), has been meeting regularly since  
25 February 1996. The council recently recommended that the "Export  
26 Financing Opportunities Act" be amended to clarify that the council  
27 should continue to monitor and provide advisory input to the company  
28 when it is created and to permit council members to serve on the  
29 company's Board of Directors or Board of Trustees, as the case may  
30 be.

31       The bill also allows the company to be organized as a limited  
32 liability corporation (hereinafter, "LLC"), which may have certain  
33 operation and tax advantages. The bill also provides the authorization  
34 to the New Jersey Economic Development Authority or other public  
35 entity to purchase interest in such an LLC as long as the interest  
36 purchased does not exceed 49 percent of the total shared interest of  
37 the company, and provided that the operating agreement of the LLC  
38 permits the authority or other public entity to resign and receive a  
39 distribution from the company before any private sector members.

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44 Allows export financing company to be organized as a limited liability  
45 corporation.