

LEGISLATIVE HISTORY CHECKLIST

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LAWS of 1999

CHAPTER: 38

NJSA:34:1B-94

(Export financing company - permit organizations as limited liability corporation)

BILL NO:A1132

SPONSOR(S): Garrett and Corodemus

DATE INTRODUCED: Pre-filed

COMMITTEE:

ASSEMBLY: Commerce, Toursim

SENATE: Commerce

AMENDED DURING PASSAGE: No

DATES OF PASSAGE:

ASSEMBLY: March 23, 1998

SENATE: January 28, 1999

DATE OF APPROVAL:March 9, 1999

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: *YES*Original

(Amendments during passage denoted by superscript numbers)

A1132

SPONSORS STATEMENT: *Yes* (Begins on page 6 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY: *Yes*

SENATE: *Yes*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

GOVERNOR'S ACTIONS

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

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REPORTS: *No*

HEARINGS: *No*

NEWSPAPER ARTICLES: *No*

P.L. 1999, CHAPTER 38, *approved March 9, 1999*

Assembly, No. 1132

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

2

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

5

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 so
30 structured that the New Jersey Economic Development Authority and
31 other public entities would incur minimal risk on their investment, with
32 private investors assuming most of the risk and earning more of the
33 profits should the new venture prove successful.

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

35

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

38 3. As used in this act:

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

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 "Commissioner" means the Commissioner of Commerce and
2 Economic Development.

3 "Department" means the Department of Commerce and Economic
4 Development.

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

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

11 "Small or medium-sized business" means a business enterprise,
12 which has its principal place of business in this State, is independently
13 owned and operated as a sole proprietorship, partnership **[or]**,
14 corporation, or limited liability company with a level of gross income
15 from operations defined by the authority as a small or medium-sized
16 business.

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

18

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

21 4. The authority is authorized, notwithstanding any law to the
22 contrary, to invest such moneys from the "Economic Recovery Fund,"
23 established pursuant to section 3 of P.L.1992, c.16 (C.34:1B-7.12), or
24 from other export or business assistance programs administered by the
25 authority, as may be available and which the authority deems
26 appropriate for the purposes of this act, in an export financing
27 company, hereinafter "the company," to be incorporated or organized
28 pursuant to the provisions of this act, which, together with those
29 investments which may be made in the stock or interest of the
30 company by other public entities involved in international export
31 markets that may include, but not necessarily be limited to, the
32 Delaware River Port Authority and the Port Authority of New York
33 and New Jersey, shall be at a minimum amount to be determined by the
34 Export Finance Company Advisory Council established pursuant to
35 section 7 of this act. The moneys shall be used for the purchase of
36 stock or an interest in the company, provided that the class of stock or
37 interest purchased by the authority and other public entities shall be of
38 such type and character as to require the company to repay the
39 investment of funds from the authority and other public entities prior
40 to the repayment of funds from private sources, but in no event shall
41 the amount of such stock or interest purchased by the authority and
42 other public entities exceed 49% of the total outstanding stock or total
43 shared interest of the company. The authority is authorized in its
44 discretion to sell or otherwise dispose of the stock or interest
45 purchased by the authority as shall be in the interest of the authority
46 but the authority shall sell or otherwise dispose of the stock or interest

1 no later than three years after the date of purchase.

2 Nothing in this act shall be construed to preclude the company from
3 being organized as a limited liability company or to preclude the
4 authority and other public entities involved in international export
5 markets from purchasing an interest in such a limited liability company
6 provided that the interest purchased by the authority and other public
7 entities shall not exceed 49 percent of the total shared interest of the
8 company, and provided that the operating agreement of the company
9 grants the authority and any other public entity the right to resign and
10 receive a distribution, representing the fair value of the authority's or
11 public entity's interest in the company, prior to the resignation of and
12 distribution to any private members.

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

14

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

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

20 a. Have a board of directors or board of trustees appropriate to the
21 form of incorporation or organization of the company consisting of:
22 (1) the commissioner and the chairman of the authority, who shall be
23 members *ex officio*; and (2) representatives of export trading
24 companies, banking and other financial institutions, and other
25 representatives of the private sector, who shall be selected by private
26 stockholders or members, and who shall constitute the majority of the
27 membership of the board.

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

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

33 (2) to prepare and submit to the Legislature, the State Treasurer,
34 the authority and the other public entities participating in the purchase
35 of stock or an interest in the company, an independent certified
36 statement annually containing the findings and determinations of such
37 auditor.

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

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

44

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

1 7. a. There is established an Export Finance Company Advisory
2 Council in, but not of, the Department of Commerce and Economic
3 Development. The council shall be made up of eleven members: one
4 shall be the Commissioner of Commerce and Economic Development,
5 or the commissioner's designee; one shall be the Chairman of the New
6 Jersey Economic Development Authority, or the chairman's designee;
7 three public members shall be appointed by the Governor; three public
8 members shall be appointed by the President of the Senate; and three
9 public members shall be appointed by the Speaker of the General
10 Assembly, one of whom shall be designated by the Speaker as chair of
11 the council. The appointment of the members shall take place within
12 60 days of the effective date of this act. The appointee of the Speaker
13 of the General Assembly designated as chair of the council shall
14 convene the council as soon as is practicable following the
15 appointment of at least six public members to the council.

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

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

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

24 (2) Seek out and gain commitments from persons, natural and
25 otherwise, to be initial investors in ~~and~~, incorporators of or
26 founding members of the export financing company.

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

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

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

39 d. Within one year of the effective date of this act, the council shall
40 provide the Governor and the Legislature with information concerning
41 the results of its efforts under subsection c. of this section, the status
42 of the export financing company and the implementation of the goals
43 of this act.

44 e. Nothing in this act shall prohibit public members of the council
45 from being among those who serve on the export finance company
46 board of directors or board of trustees, as appropriate to its

1 organizational charter or operating agreement.

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

3

4 6. This act shall take effect immediately.

5

6

7

8

9 Allows export financing company to be organized as a limited liability
10 corporation.

ASSEMBLY, No. 1132

STATE OF NEW JERSEY

208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Assemblyman E. SCOTT GARRETT

District 24 (Sussex, Hunterdon and Morris)

Assemblyman STEVE CORODEMUS

District 11 (Monmouth)

Co-Sponsored by:

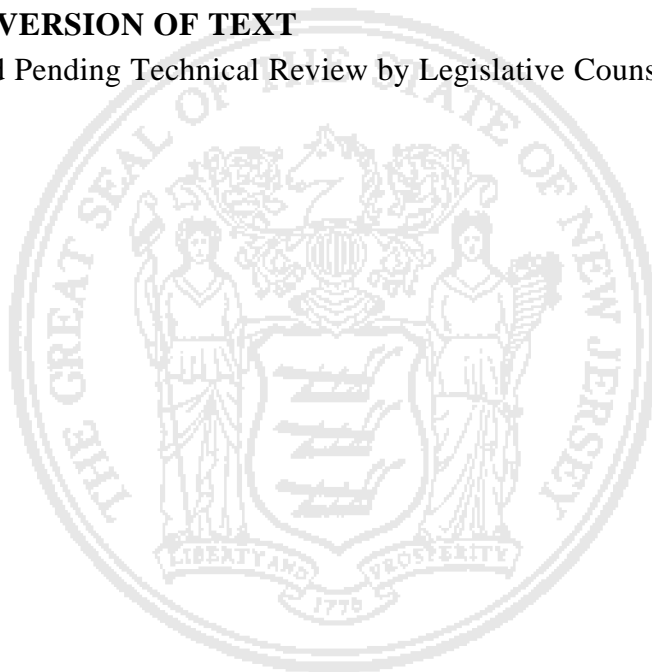
Assemblyman Azzolina

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 2/20/1998)

A1132 GARRETT, CORODEMUS

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32 the authority and the other public entities participating in the purchase
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46 Council in, but not of, the Department of Commerce and Economic

1 Development. The council shall be made up of eleven members: one
2 shall be the Commissioner of Commerce and Economic Development,
3 or the commissioner's designee; one shall be the Chairman of the New
4 Jersey Economic Development Authority, or the chairman's designee;
5 three public members shall be appointed by the Governor; three public
6 members shall be appointed by the President of the Senate; and three
7 public members shall be appointed by the Speaker of the General
8 Assembly, one of whom shall be designated by the Speaker as chair of
9 the council. The appointment of the members shall take place within
10 60 days of the effective date of this act. The appointee of the Speaker
11 of the General Assembly designated as chair of the council shall
12 convene the council as soon as is practicable following the
13 appointment of at least six public members to the council.

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

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

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

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

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

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

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

37 d. Within one year of the effective date of this act, the council shall
38 provide the Governor and the Legislature with information concerning
39 the results of its efforts under subsection c. of this section, the status
40 of the export financing company and the implementation of the goals
41 of this act.

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

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

1 6. This act shall take effect immediately.

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3

4

STATEMENT

5

6 Pursuant to enactment of the "Export Financing Opportunities Act,"
7 P.L.1995, c.209 (C.34:1B-93 et seq.), an Export Finance Company
8 Advisory Council (hereinafter, "council"), was formed to develop a
9 form of organization and a plan of operation for a proposed Export
10 Finance Company (hereinafter, "company"). The council recently
11 recommended that P.L.1995, c.209 be amended to clarify that the
12 council should continue to monitor and provide advisory input to the
13 company when it is created and to permit council members to serve on
14 the company's Board of Directors or Board of Trustees, as the case
15 may be. This bill would implement those recommendations.

16 The bill also allows the company to be organized as a limited
17 liability corporation, in order to allow for certain operation and tax
18 advantages.

19 The bill further authorizes the New Jersey Economic Development
20 Authority (hereinafter, "authority") or other public entity to purchase
21 interest in the company as long as the interest purchased does not
22 exceed 49 percent of the total shared interest of the company, and
23 provided that the operating agreement of the company permits the
24 authority or other public entity to resign and receive a distribution
25 from the company before any private sector members.

ASSEMBLY COMMERCE, TOURISM, GAMING AND
MILITARY AND VETERANS' AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1132

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1998

The Assembly Commerce, Tourism, Gaming and Military and Veterans' Affairs Committee reports favorably Assembly Bill No. 1132.

As reported, this bill amends the "Export Financing Opportunities Act," P.L.1995, c.209 (C.34:1B-93 et seq.) to clarify that the Export Finance Company (hereinafter, "the company") may be organized as a limited liability corporation pursuant to the "New Jersey Limited Liability Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) in order to allow for certain operation and tax advantages.

The Export Finance Company Advisory Council (hereinafter, "the council"), established pursuant to section 7 of P.L.1995, c.209 (C.34:1B-99), has recommended that P.L.1995, c.209 be amended to clarify that the council should continue to monitor and provide advisory input to the company when it is created and to permit council members to serve on the company's Board of Directors or Board of Trustees, as the case may be. This bill would implement those recommendations.

The bill further authorizes the New Jersey Economic Development Authority (hereinafter, "the authority") or other public entity to purchase an interest in the company as long as the interest purchased does not exceed 49 percent of the total shared interest of the company, and provided that the operating agreement of the company permits the authority or other public entity to resign and receive a distribution from the company before any private sector members.

This bill was pre-filed for introduction in the 1998 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE COMMERCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1132

STATE OF NEW JERSEY

DATED: JUNE 4, 1998

The Senate Commerce Committee reports favorably Assembly Bill No. 1132.

This bill amends the "Export Financing Opportunities Act," P.L.1995, c.209 (C.34:1B-93 et seq.), to clarify that an export financing company (hereinafter, "the company") may be organized as a limited liability company pursuant to the "New Jersey Limited Liability Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) in order to allow for certain operation and tax advantages.

The bill clarifies that the Export Finance Company Advisory Council, established pursuant to that act, should continue to monitor and provide advisory input to the company after it is created and permits council members to serve on the company's board of directors or board of trustees, as the case may be.

The bill further authorizes the New Jersey Economic Development Authority or other public entity to purchase an interest in the company, organized as a limited liability company, as long as the interest purchased does not exceed 49 percent of the total shared interest of the company, and provided that the operating agreement of the company permits the authority or other public entity to resign and receive a distribution from the company before any private sector members.

Office of the Governor
NEWS RELEASE

PO BOX 004
TRENTON, NJ 08625

CONTACT: Gene Herman
609-777-2600

RELEASE: March 9, 1999

Gov. Christie Whitman today signed the following pieces of legislation:

A-1132, sponsored by Assembly Members E. Scott Garrett (R-Sussex/Hunterdon/Morris) and Steve Corodemus (R-Monmouth), implements recommendations by the Export Financing Advisory Council to permit the Export Finance Company to be organized as a limited liability corporation in order to allow for certain operation and tax advantages. The company is intended to be a public-private, non-profit agency that will use funds from the private sector and the New Jersey Economic Development Authority (EDA) to provide small business loans to export companies. The bill also includes the Export Financing Advisory Council's recommendation that it should monitor and provide advisory input to the company when it is created and that council members should be permitted to serve on the company's board of directors or board of trustees. The Company's board will include the secretary of the Commerce and Economic Growth Commission and the chairman of the EDA. The bill further authorizes the EDA to use \$2 million which previously was budgeted to purchase interest in the Company as long as the interest purchased does not exceed 49 percent of the total shared interest of the company, and provided that the operating agreement of the Company permits the EDA, or another public entity, to resign and receive a distribution from the Company prior to any private sector members. The Legislature included \$2 million in each of the last two state budgets in anticipation of the Company's formation. Since the company had not yet been formed, those funds were not accessed. The Export Finance Company Advisory Council was created under the Export Financing Opportunities Act to develop a form of organization and a plan of operation for the Export Finance Company.

A-45, sponsored by Assembly Members Gary W. Stuhltrager (R-Salem/Cumberland/ Gloucester) and Francis L. Bodine (R-Atlantic/Burlington/Camden) and Senators Raymond J. Zane (D-Salem/Cumberland/Gloucester) and Martha W. Bark (R-Atlantic/Burlington/Camden), appropriates \$26.5 million from various bond acts to the State Agriculture Development Committee for farmland preservation. The funds will be used for easement purchases by counties and for matching grants for soil and water conservation and program implementation costs. The bill specifically approves funding eligibility for 24 farmland preservation projects in Atlantic, Burlington, Cape May, Cumberland, Gloucester and Salem counties.

A-46, sponsored by Assembly Members Melvin Cottrell (R-Burlington/Monmouth/Ocean) and Paul Kramer (R-Mercer/Middlesex) and Senators Robert W. Singer (R-Burlington/ Monmouth/Ocean) and Peter A. Inverso (R-Mercer/Middlesex), approves funding eligibility for 20 farmland projects in Mercer, Middlesex, Monmouth, Ocean and Somerset Counties. Funding will be provided through a companion bill, A-45, which appropriates a total of \$26,528,547 from various bond acts to the State Agriculture Development Committee for farmland preservation. The funds will be used for easement purchases by counties and municipalities.

A-47, sponsored by Assembly Members E. Scott Garrett (R-Sussex/Hunterdon/Morris) and Leonard Lance (R- Warren/Hunterdon/Mercer) and Senators William E. Schluter (R- Warren/ Hunterdon/ Morris) and Robert E. Littell (R-Sussex), approves funding eligibility for 24 farmland projects in Hunterdon, Morris, Sussex and Warren counties. Funding will be provided through a related bill, A-45, which appropriates a total of \$26,528,547 from various bond acts to the State Agriculture Development Committee for farmland preservation. The funds will be used for easement purchases by counties and municipalities.