

SENATE BILL No. 369

April 25, 1989, Introduced by Senator ARTHURHULTZ and referred to the Committee on Economic Development.

A bill to amend sections 2, 3, 4, 5, 7, 8, 10, 14, and 15 of Act No. 157 of the Public Acts of 1986, entitled "Michigan export development act," being sections 447.152, 447.153, 447.154, 447.155, 447.157, 447.158, 447.160, 447.164, and 447.165 of the Michigan Compiled Laws; and to add section 8a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2, 3, 4, 5, 7, 8, 10, 14, and 15 of Act
2 No. 157 of the Public Acts of 1986, being sections 447.152,
3 447.153, 447.154, 447.155, 447.157, 447.158, 447.160, 447.164,
4 and 447.165 of the Michigan Compiled Laws, are amended and
5 section 8a is added to read as follows:

6 Sec. 2. As used in this act:

7 (a) "Authority" means the Michigan export development
8 authority created by section 3.

1 (b) "Board" means the board of directors of the authority
2 established by section 4.

3 ~~(c) "Eligible export loan" means a loan to a participating~~
4 ~~financial institution located within this state the proceeds of~~
5 ~~which are restricted to the financing of eligible export~~
6 ~~transactions.~~

7 (C) ~~(d)~~ "Eligible export transaction" means the sale of
8 goods or services, or the development of goods or services for
9 sale, outside of the United States by a person doing business in
10 this state, which goods or services, in the judgment of the
11 authority, have ~~at least 51%~~ A SUFFICIENT PORTION of their
12 value created within this state and which sale or development, in
13 the judgment of the authority, creates or maintains employment in
14 this state.

15 (D) "EXPORT INSURANCE" MEANS INSURANCE PROVIDED BY THE
16 AUTHORITY TO PROTECT AN EXPORTER AGAINST A FOREIGN BUYER'S FAIL-
17 URE TO PAY FOR GOODS OR SERVICES FOR POLITICAL OR COMMERCIAL
18 REASONS. THE AMOUNT OF THE LOSS COVERED FOR EACH TRANSACTION AND
19 PARTICULAR RISKS SHALL BE DETERMINED BY THE AUTHORITY.

20 (E) "GRANT" MEANS AN AMOUNT OF MONEY PROVIDED BY THE AUTHOR-
21 ITY TO A NONPROFIT ORGANIZATION.

22 (F) ~~(c) "Guaranteed funding"~~ "GUARANTEE" means a guarantee
23 against loss, in whole or in part, of principal of and interest
24 on an eligible export loan. The guarantee may include, without
25 limitation, insurance against loss up to the guarantee amount. A
26 single guarantee may encompass several individual eligible export
27 loans or eligible export transactions.

1 (G) ~~-(f)-~~ "Guarantee amount" means the maximum amount
2 payable under ~~guaranteed funding~~ A GUARANTEE which amount shall
3 be specifically set forth in writing ~~, executed by the chair~~
4 ~~person and secretary of the board,~~ at the time the guarantee is
5 entered into by the authority.

6 (H) "LOAN" MEANS AN AMOUNT OF MONEY PROVIDED BY THE AUTHOR-
7 ITY WHICH IS TO BE REPAID AT THE INTEREST RATE OR RATES, TERMS,
8 AND OTHER CONDITIONS AS DETERMINED BY THE AUTHORITY. IF THE LOAN
9 IS TO A PARTICIPATING FINANCIAL INSTITUTION, THE CONDITIONS OF
10 THE LOAN SHALL BE ESTABLISHED BY THE INSTITUTION AND THE
11 AUTHORITY.

12 (I) ~~-(g)-~~ "Participating financial institution" means a bank
13 as defined by the banking code of 1969, Act No. 319 of the Public
14 Acts of 1969, being sections 487.301 to 487.598 of the Michigan
15 Compiled Laws, an agency or branch of a foreign banking corpora-
16 tion licensed by the commissioner of the financial institutions
17 bureau, or a national bank, federal savings and loan association,
18 or federal credit union located within this state that has been
19 approved by the board to participate in guaranteed funding for
20 eligible export loans and transactions within the purposes of
21 this act.

22 (J) "PERSON" MEANS AN INDIVIDUAL, SOLE PROPRIETORSHIP, PART-
23 NERSHIP, JOINT VENTURE, PROFIT OR NONPROFIT CORPORATION, PUBLIC
24 OR PRIVATE UNIVERSITY OR COLLEGE, PUBLIC UTILITY, OR AN ASSOCIA-
25 TION OF PERSONS ORGANIZED FOR AGRICULTURAL, COMMERCIAL, OR INDUS-
26 TRIAL PURPOSES.

1 Sec. 3. (1) The Michigan export development authority is
2 created as a body politic and corporate within, but not as a part
3 of, the department of agriculture. The authority shall exercise
4 the authority's prescribed statutory powers, duties, and func-
5 tions independently of the director of the department of agricul-
6 ture and independently of the commission of agriculture.

7 ~~However, the~~ THE budgeting, procurement, and related functions
8 of the authority shall be performed under the direction and
9 supervision of the director of the department of agriculture.

10 (2) The purpose of the authority is:

11 (a) To assist, promote, encourage, develop, and advance eco-
12 nomic prosperity and employment throughout this state by foster-
13 ing the expansion of exports of goods and services to foreign
14 purchasers.

15 (b) To cooperate and act in conjunction with other organi-
16 zations, public and private, the objects of which are the promo-
17 tion and advancement of export trade activities in this state.

18 (c) To establish a source of ~~guaranteed funding~~ LOANS,
19 GRANTS, GUARANTEES, and EXPORT insurance to support export devel-
20 opment not otherwise available.

21 (d) To provide information and referrals to, and to act as a
22 clearinghouse for, potential and existing exporters.

23 Sec. 4. (1) The governing and administrative powers of the
24 authority are vested in a board of directors consisting of 12
25 members. Three members shall be the director of the department
26 of commerce, the director of the department of agriculture, and
27 the state treasurer. The director of commerce, the director of

1 the department of agriculture, and the state treasurer shall
2 serve as full voting members of the board and may ~~vote either by~~
3 ~~proxy,~~ APPOINT A representative ~~, or designee~~ TO SERVE AS A
4 VOTING MEMBER IN THEIR ABSENCE. Nine members shall be appointed
5 by the governor with the advice and consent of the senate.

6 (2) At least 6 of the members shall be from the private
7 sector. An appointed member of the authority shall be a resident
8 of this state. An appointment to fill a vacancy of an appointed
9 member shall be made in the same manner as the original
10 appointment. Of the 9 members appointed by the governor for a
11 fixed term, 1 shall be appointed from 1 or more nominees of the
12 speaker of the house of representatives and 1 shall be appointed
13 from 1 or more nominees of the senate majority leader.

14 (3) At least 1 of the appointed members of the board shall
15 be a person of recognized ability and experience in each of the
16 following areas:

- 17 (a) Finance.
- 18 (b) International trade.
- 19 (c) Business management.
- 20 (d) Economics.
- 21 (e) Agriculture.

22 (4) Of the original 9 appointed members, 3 members shall be
23 appointed for terms expiring on the third Monday in June, 1986; 3
24 members shall be appointed for terms expiring on the third Monday
25 in June, 1987; and 3 members shall be appointed for terms expir-
26 ing on the third Monday in June, 1988. Their respective
27 successors shall be appointed for terms of 3 years from the third

1 Monday in June of the year of appointment. A member shall serve
2 until his or her successor is appointed and qualified.

3 (5) Before beginning his or her duties, a member of the
4 board shall take and subscribe the constitutional oath of
5 office. A record of each oath or affirmation shall be filed in
6 the office of the secretary of state.

7 (6) A member of the board is not entitled to compensation
8 for services as a member, but may be reimbursed for all actual
9 and necessary expenses incurred in connection with the per-
10 formance of duties as a member.

11 (7) The board annually shall elect 1 of its members as
12 chairperson, 1 OF ITS MEMBERS AS VICE-CHAIRPERSON, and 1 member
13 as secretary. The board may elect ~~such~~ other officers as it
14 considers proper. Six members of the board constitute a quorum,
15 and the affirmative vote of the majority of members present at a
16 meeting of the board is necessary and sufficient for an action
17 taken by the board. ~~However, the~~ THE affirmative votes of not
18 less than 6 members are necessary for the approval of a resolu-
19 tion authorizing the issuance of bonds ~~or guaranteed funding~~
20 under this act.

21 Sec. 5. (1) A vacancy in the membership of the board shall
22 not impair the right of a quorum to exercise all rights and per-
23 form all the duties of the board. An action taken by the board
24 may be authorized by resolution at a regular or special meeting
25 and shall take effect upon the date ~~that the chairperson certi-~~
26 ~~fies the action of the authority by signing~~ the resolution IS

1 APPROVED BY THE BOARD unless some other date is provided in the
2 resolution.

3 (2) The board may delegate to 1 or more of its members or to
4 an official, agent, or employee of the authority the powers and
5 duties as the board considers proper.

6 (3) A member of the board or a person acting on behalf of
7 the authority executing a contract, commitment, or agreement
8 issued under this act shall not be personally liable or account-
9 able on the contract, commitment, or agreement.

10 (4) A member of the board or a person acting on behalf of
11 the authority shall not be liable personally for damage or injury
12 resulting from the performance of his or her duties arising under
13 this act. The authority shall indemnify and procure insurance
14 indemnifying the members of the board AND STAFF OFFICERS
15 APPOINTED BY A RESOLUTION OF THE BOARD from personal loss or
16 accountability from liability asserted by a person on the bonds
17 or notes of the fund or from any personal liability or account-
18 ability by reason of the issuance of the bonds, notes, insurance,
19 or guarantees; or by reason of any other action taken or the
20 failure to act by the authority.

21 (5) THE BOARD MAY APPOINT UP TO 2 EMPLOYEES TO UNCLASSIFIED
22 POSITIONS NOT INCLUDED IN THE STATE CIVIL SERVICE TO SERVE FOR
23 TERMS AT THE PLEASURE OF THE BOARD.

24 Sec. 7. The authority shall possess all the powers of a
25 body politic and corporate necessary and convenient to accomplish
26 the purposes of this act including, but not limited to, all of
27 the following powers:

1 (a) To borrow money and otherwise incur indebtedness for any
2 of its purposes including the issuance of bonds, debentures,
3 notes, or other evidence of indebtedness, whether secured or
4 unsecured.

5 (b) To purchase, discount, sell, or negotiate, with or with-
6 out guaranty notes, other evidences of indebtedness, and to sell
7 and guarantee securities.

8 (c) To lend money to a financial institution in the form of
9 an eligible export loan which is used to finance eligible export
10 transactions OR AS OTHERWISE PROVIDED IN SECTION 8A.

11 (d) To procure OR PROVIDE EXPORT insurance OR GUARANTEES to
12 guarantee, insure, coinsure, or reinsure against risk of loss,
13 and ~~such~~ other insurance OR GUARANTEES as the authority may
14 consider necessary.

15 (e) To provide financial counseling services to businesses
16 of this state.

17 (f) To procure insurance to secure the payment of principal
18 and interest on bonds, notes, or other obligations of the
19 authority.

20 (g) To accept gifts, grants, or loans from, and enter into
21 contracts or other transactions with, a federal or state agency,
22 a municipality, a private organization, or any other source. TO
23 CHARGE AND COLLECT FEES FOR ITS SERVICES. TO ENTER INTO CON-
24 TRACTS OR OTHER AGREEMENTS WITH THE EXPORT-IMPORT BANK OF THE
25 UNITED STATES, THE FOREIGN CREDIT INSURANCE ASSOCIATION, OR OTHER
26 FEDERAL AGENCIES OR INSTRUMENTALITIES.

1 (h) To adopt, and from time to time to amend or rescind a
2 bylaw or rule of the authority as may be necessary or convenient
3 for the performance of its functions, powers, and duties under
4 this act.

5 (i) To sue and be sued.

6 (j) To purchase; receive; take by grant, gift, devise,
7 bequest, or otherwise; lease; or acquire, own, hold, improve,
8 employ, use, or deal in and with real or personal property, or
9 any interest in real or personal property, wherever situated.

10 (k) To sell, convey, lease, exchange, transfer, or otherwise
11 dispose of property or an interest in property, wherever
12 situated.

13 (l) To promulgate rules necessary to carry out the purposes
14 of this act and to exercise the powers expressly granted in this
15 act pursuant to the administrative procedures act of 1969, Act
16 No. 306 of the Public Acts of 1969, being sections 24.201 to
17 24.328 of the Michigan Compiled Laws.

18 (M) TO LEAD, PARTICIPATE IN, SUPPORT, OR OTHERWISE COOPERATE
19 IN TRADE MISSIONS, TRADE SHOWS, AND RELATED EFFORTS TO ENCOURAGE
20 THE EXPORT OF MICHIGAN GOODS AND SERVICES.

21 (N) TO SPONSOR OR FOSTER A FOREIGN SALES CORPORATION AS
22 DEFINED IN SECTION 922 OF THE INTERNAL REVENUE CODE OF 1986, 26
23 U.S.C. 922. TO ESTABLISH, PARTICIPATE, AND SECURE FEDERAL
24 APPROVAL FOR AN EXPORT TRADING COMPANY UNDER THE EXPORT TRADING
25 COMPANY ACT OF 1982, PUBLIC LAW 97-290, 96 STAT. 1233, OR EQUIVA-
26 LENT ENTITIES UNDER SIMILAR FEDERAL LEGISLATION. THE AUTHORITY
27 MAY IN CONNECTION WITH ANY ENTITIES CREATED UNDER THIS

1 SUBDIVISION ACQUIRE AND TRANSFER TITLE TO GOODS AND CORPORATE OR
2 PARTNERSHIP OWNERSHIP INTEREST, AND MAY ENTER INTO JOINT VENTURES
3 WITH OTHER EXPORT TRADING COMPANIES.

4 (0) ~~(m)~~ To exercise all other powers and functions neces-
5 sary or appropriate to carry out the duties and purposes set
6 forth in this act.

7 Sec. 8. (1) The authority may provide ~~guaranteed funding~~
8 ~~for an eligible export loan used to finance~~ A GUARANTEE OR
9 EXPORT INSURANCE FOR an eligible export transaction. ~~through a~~
10 ~~participating financial institution.~~ Any guarantee OR EXPORT
11 INSURANCE entered into by the authority under this act shall not
12 constitute a general obligation of this state. ~~Guaranteed~~
13 ~~funding~~ GUARANTEES OR EXPORT INSURANCE PROVIDED by the authority
14 under this act shall not be terminated, canceled, or otherwise
15 revoked except in accordance with the terms of the guarantee OR
16 EXPORT INSURANCE; shall be conclusive evidence that the guarantee
17 OR EXPORT INSURANCE complies fully with the provisions of this
18 act; and shall be valid and incontestable in the hands of a
19 holder in due course of a guaranteed eligible export loan.

20 (2) The authority may charge reasonable fees for providing
21 ~~guaranteed funding~~ GUARANTEE OR EXPORT INSURANCE pursuant to
22 this section to a participating financial institution.

23 (3) Before providing financing for an eligible export trans-
24 action, a participating financial institution shall ~~investigate~~
25 ~~a line of credit to the exporter in order to~~ determine the
26 exporter's viability, the economic benefits to be derived from
27 the eligible export transaction, the prospects for repayment, and

1 any other facts that it considers necessary in order to determine
2 that the ~~guaranteed funding~~ GUARANTEE OR EXPORT INSURANCE is
3 consistent with the purposes of this act.

4 (4) The authority shall provide ~~guaranteed funding~~ THE
5 GUARANTEE OR EXPORT INSURANCE only if, and to the extent that,
6 the authority determines in its sole discretion that at least
7 1 of the following is true:

8 (a) ~~Guaranteed funding~~ THE GUARANTEE OR EXPORT INSURANCE
9 is reasonably necessary in order to stimulate or facilitate the
10 making of an eligible export transaction including, without limi-
11 tation, the making of the eligible export transaction upon terms
12 that will enable the transaction to be reasonably competitive
13 with transactions in other states or in foreign countries.

14 (b) The ~~guaranteed funding~~ GUARANTEE OR EXPORT INSURANCE
15 is reasonably necessary in order to stimulate or facilitate the
16 resale of an eligible export loan to a holder in due course that
17 otherwise would not purchase the eligible export loan.

18 ~~(c) The exporter applying for the guaranteed funding has~~
19 ~~not or will not receive more than \$1,500,000.00 in guaranteed~~
20 ~~funding in the 12 months preceding the date of execution of the~~
21 ~~guaranteed funding agreement. This subdivision does not apply if~~
22 ~~at least 2/3 of the members of the board vote to waive this~~
23 ~~requirement.~~

24 ~~(5) The guaranteed funding for an eligible export loan pro-~~
25 ~~vided by the authority to a participating financial institution~~
26 ~~shall be loaned to the exporter at a fixed interest rate and term~~
27 ~~as the authority, from time to time, may require.~~

1 (5) ~~(6)~~ The authority may condition the provision of
2 ~~guaranteed funding~~ GUARANTEE OR EXPORT INSURANCE under this
3 section upon such other terms and conditions as the authority
4 considers desirable to carry out the purposes of this act.

5 SEC. 8A. THE AUTHORITY MAY PROVIDE A LOAN OR GRANT FOR 1 OR
6 MORE OF THE FOLLOWING PURPOSES:

7 (A) THE FINANCING OF ELIGIBLE EXPORT TRANSACTIONS. THE PRO-
8 CEEDS OF LOANS TO PARTICIPATING FINANCIAL INSTITUTIONS SHALL BE
9 RESTRICTED TO THE FINANCING OF ELIGIBLE EXPORT TRANSACTIONS.

10 (B) TO INDUCE A PERSON TO ESTABLISH OR EXPAND BUSINESS OPER-
11 ATIONS WITHIN THIS STATE WHICH WILL PRODUCE EXPORTS.

12 (C) TO MODIFY A PRODUCT TO IMPROVE THE PRODUCT'S POSSIBIL-
13 ITIES FOR EXPORT.

14 (D) TO CONDUCT MARKET RESEARCH TO DETERMINE THE POTENTIAL
15 FOR EXPORTING GOODS AND SERVICES FROM THIS STATE.

16 Sec. 10. (1) Bonds issued under this act may be executed
17 and delivered at any time, may be issued as a single issue or
18 from time to time as several issues, may be in the form and
19 denominations, may ~~be of such tenor, shall~~ be in coupon or reg-
20 istered form, may be payable in installments and at such time or
21 times not exceeding ~~5~~ 30 years from their date, may be subject
22 to the terms of redemption, may be payable at such place or
23 places, may bear interest at the rate or rates ~~payable at the~~
24 ~~place or places and evidence in the manner,~~ AS MAY BE SET,
25 RESET, OR CALCULATED FROM TIME TO TIME, OR MAY BEAR NO INTEREST
26 and may contain provisions not inconsistent with this act, all of

1 which shall be provided in the resolution of the authority
2 authorizing the bonds.

3 (2) Bonds issued under the authority of this act may be sold
4 at public or private sale at the price and in the manner and from
5 time to time as may be determined by the authority to be most
6 advantageous. The authority may pay all expenses, premiums,
7 insurance premiums, and commissions which the authority considers
8 necessary or advantageous in connection with the authorization,
9 sale, and issuance of the bonds from proceeds of the bonds.

10 (3) EXCEPT AS OTHERWISE PROVIDED BY THIS ACT, BONDS OR NOTES
11 ISSUED BY THE AUTHORITY ARE NOT SUBJECT TO THE TERMS OF THE
12 MUNICIPAL FINANCE ACT, ACT NO. 202 OF THE PUBLIC ACTS OF 1943,
13 BEING SECTIONS 131.1 TO 139.3 OF THE MICHIGAN COMPILED LAWS. THE
14 BONDS ISSUED BY THE AUTHORITY ARE NOT REQUIRED TO BE REGISTERED.
15 A FILING OF A BOND OF THE AUTHORITY IS NOT REQUIRED UNDER THE
16 UNIFORM SECURITIES ACT, ACT NO. 265 OF THE PUBLIC ACTS OF 1964,
17 BEING SECTIONS 451.501 TO 451.818 OF THE MICHIGAN COMPILED LAWS.

18 (4) EXCEPT AS PROVIDED IN SUBSECTION (5), BONDS AND NOTES
19 ISSUED BY THE AUTHORITY SHALL BE APPROVED BY THE DEPARTMENT OF
20 TREASURY PRIOR TO THEIR ISSUANCE. THE DEPARTMENT OF TREASURY
21 SHALL DETERMINE THAT THE AMOUNT OF THE PROPOSED ISSUE IS SUFFI-
22 CIENT, BUT NOT EXCESSIVE, THAT THE REVENUE AND PROPERTIES PLEDGED
23 FOR PAYMENT ARE SUFFICIENT, AND THAT THE BONDS OR NOTES AND THE
24 PROCEEDINGS AUTHORIZING THE ISSUE COMPLY WITH THIS ACT AND OTHER
25 APPLICABLE LAW.

1 (5) BONDS AND NOTES ISSUED BY THE AUTHORITY SHALL BE SUBJECT
2 TO SECTIONS 10 AND 11 OF ACT NO. 202 OF THE PUBLIC ACTS OF 1943,
3 BEING SECTIONS 133.10 AND 133.11 OF THE MICHIGAN COMPILED LAWS.

4 Sec. 14. The bonds, INTEREST ON THE BONDS, AND THE TRANSFER
5 OF THE BONDS authorized under this act ~~and the income from the~~
6 ~~bonds~~ shall be exempt from all ~~state taxes~~ TAXATION BY THIS
7 STATE OR ANY OF ITS POLITICAL SUBDIVISIONS, except for inheri-
8 tance, estate, or ~~transfer~~ GIFT taxes. ~~In addition, a secur-~~
9 ~~ity agreement or financing agreement made under this act is~~
10 ~~exempt from state stamp and transfer taxes.~~

11 Sec. 15. The PROPERTY OF THE authority ~~is~~ AND ITS INCOME
12 AND OPERATION ARE exempt from all ~~franchise, corporate, busi-~~
13 ~~ness, and income taxes levied by the state. However, this~~
14 TAXATION BY THIS STATE OR ITS POLITICAL SUBDIVISIONS. THIS sec-
15 tion shall not be construed to ~~exempt~~ PROVIDE AN EXEMPTION from
16 any ~~such~~ taxes FOR a person receiving ~~guaranteed funding with~~
17 ASSISTANCE FROM the authority under this act.