

STATE OF NEW YORK

9665--B

IN ASSEMBLY

February 4, 2020

Introduced by M. of A. ABINANTI, JEAN-PIERRE, KIM, FALL, EPSTEIN -- read once and referred to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, the state finance law and the general municipal law, in relation to establishing the "New York public banking act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York public banking act".

3 § 2. It is the intent of the legislature that this act (i) authorizes
4 the lending of public credit to public banks and authorizes public
5 ownership of stock in public banks for the purpose of achieving cost
6 savings, strengthening local economies, supporting community economic
7 development, and addressing infrastructure and housing needs for locali-
8 ties; and (ii) codifies the common law interpretation of the New York
9 state constitution that cities, counties, and other municipalities may
10 own stock in and lend money to private corporations so long as such
11 actions are pursuant to a public purpose.

12 § 3. Subdivisions 1 and 11 of section 2 of the banking law, subdivi-
13 sion 1 as amended by chapter 684 of the laws of 1938 and subdivision 11
14 as amended by chapter 154 of the laws of 2007, are amended to read as
15 follows:

16 1. Bank. The term, "bank," when used in this chapter, unless a differ-
17 ent meaning appears from the context, means any corporation, other than
18 a trust company, organized under or subject to the provisions of article
19 three or three-C of this chapter.

20 11. Banking organizations. The term, "banking organizations," when
21 used in this chapter, means and includes all banks, trust companies,
22 private bankers, savings banks, safe deposit companies, savings and loan
23 associations, credit unions, public banks organized under article
24 three-C of this chapter, and investment companies.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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§ 4. The banking law is amended by adding a new article 3-C to read as follows:

ARTICLE 3-C
PUBLIC BANKS

Section 156. Definitions.

156-a. Sponsors and corporate structure.

156-b. Governance.

156-c. Public bank charter requirements.

156-d. Financial and operations framework.

156-e. Public benefit corporations.

156-f. Insurance.

156-g. Deposit of public funds.

156-h. Permitted activities of the public bank.

156-i. Inconsistency with other laws.

156-j. Owners not to be considered bank holding companies.

§ 156. Definitions. For the purposes of this article:

1. "Advisory board" means a board established pursuant to section one hundred fifty-six-b of this article.

2. "Bank" means any corporation, other than a trust corporation, organized under or subject to the provisions of this article or article three of this chapter.

3. "Board" means a board of directors or board of managers of a public bank.

4. "Deposit" means the placing of money with a public bank to be withdrawn upon the depositor's demand or under the rules and regulations agreed upon between the bank and the depositor.

5. "Economic distressed communities" means those communities where at least thirty percent of residents have incomes that are less than the national poverty level and where the unemployment rate is greater than the national unemployment rate or economic opportunity zones designated communities.

6. "Independent" means, with respect to a member of a public bank's board of directors, board of managers, or advisory board, an individual who:

(a) at the time of his or her election to the board of directors, board of managers, or advisory board of a public bank, is not a holder of any public office within the sponsor; and

(b) within the past five years has not been a holder of public office within such sponsor.

7. "Public bank" means a not-for-profit corporation, a stock corporation or limited liability company that is chartered pursuant to this article as a bank.

8. "Public bank application documents" means a business plan and application to be submitted to the department pursuant to section one hundred fifty-six-c of this article for the purpose of chartering a public bank.

9. "State or local authority" means a local government or agency, a group of two or more local governments or agencies acting together, special district, a group of two or more special districts acting together, state agency, or a group of two or more state agencies acting together.

10. "Sponsor" means one or more cities and/or counties within the state of New York.

§ 156-a. Sponsors and corporate structure. A public bank may be a not-for-profit corporation, a limited liability company or corporation

1 that is formed by a sponsor, subject to the following corporate struc-
2 ture requirements:

3 1. The sponsor shall be (a) the sole member of a not-for-profit public
4 bank, (b) the majority and controlling member of a limited liability
5 company public bank, and (c) the majority and controlling shareholder of
6 a corporation public bank.

7 2. A public bank organized as a limited liability company or corpo-
8 ration may have other members or shareholders but such other members or
9 shareholders shall only be passive members or shareholders and shall not
10 have any consent or veto rights over any decisions, any removal rights
11 of the sponsor, any rights to elect or choose the board or any voting
12 rights whatsoever.

13 3. Passive members or passive shareholders shall be allowed to invest
14 capital into a public bank so long as such passive members or passive
15 shareholders are approved by the sponsor and the sponsor maintains the
16 right to direct the public bank to purchase the interests of any passive
17 members or shareholders at a market price determined by an independent
18 third party selected by the sponsor at any time.

19 4. The sponsor shall owe no fiduciary duty nor any other duty to
20 passive investors. No passive investor may pursue legal action against
21 the sponsor for any reason other than failure to distribute funds
22 required to be distributed pursuant to governing documents of the public
23 bank.

24 § 156-b. Governance. 1. The public bank shall be governed by a board.
25 Such board shall be composed of no fewer than five directors and no more
26 than eleven directors. Each director shall live within the jurisdic-
27 tional boundaries of the sponsor.

28 2. The sponsor shall determine the public bank's initial board, the
29 term of the board, the qualifications of the board and the method for
30 replacing the board.

31 3. A majority of the board shall be composed of independent directors
32 who are not government employees. The chair of the board must be an
33 independent director.

34 4. The board shall set policy for the public bank; provided that
35 neither the board nor any director shall be involved in day to day deci-
36 sions regarding particular instruments. Management decisions shall be
37 made independently by bank management who shall be appointed by the
38 board consistent with bank policy.

39 5. The board may establish one or more committees to manage the public
40 bank.

41 6. The board shall adhere to all reporting requirements under this
42 chapter regarding the public bank's financial condition.

43 7. A public bank shall form one or more advisory boards in order to
44 provide advice and carry out any other duties, as determined by the
45 public bank, including the following:

46 (a) provide input to the board regarding ways to accomplish its
47 mission;

48 (b) ensure that the board follows strict ethical standards as deter-
49 mined by the sponsor in the public bank's governing documents, through
50 the approval of bylaws to govern the board's management;

51 (c) provide technical advice as needed; and

52 (d) provide an annual report to the public and the sponsor evaluating
53 the public bank's performance in relation to its mission, its ethical
54 standards and its financial soundness.

55 8. The sponsor will determine the initial advisory board membership,
56 the term of its members, the qualifications of members and the method

1 for replacing its members, provided that a majority of each advisory
2 board is made up of independent members who are not governmental employ-
3 ees. The advisory board shall be composed of no fewer than five and no
4 more than eleven members. Any advisory board member shall live within
5 the jurisdictional boundary of the public bank's sponsor or its members
6 or shareholders.

7 9. Any action required or permitted by this chapter to be taken by the
8 board or an advisory board may be taken at a duly called meeting of such
9 board in accordance with its governing documents or without a meeting if
10 the action taken is evidenced by one or more written consents describing
11 the action taken and signed by each member of the board or advisory
12 board.

13 § 156-c. Public bank charter requirements. 1. A proposed public bank
14 shall be chartered by the department upon submission of the public bank
15 application documents that demonstrate the following:

16 (a) the purpose of the proposed public bank is consistent with the
17 purposes required under this article;

18 (b) minimum initial capitalization is no less than ten percent of the
19 public bank's projected lending total for the first year of operation
20 after receipt of its charter;

21 (c) adequate reserves and liquidity exist to cover the public bank's
22 obligations relating to deposit withdrawals and defaulted loans;

23 (d) the qualifications of the proposed directors;

24 (e) the qualifications of the proposed chief executive officer and
25 management team;

26 (f) an organizational chart;

27 (g) procedures for obtaining fidelity insurance;

28 (h) sufficient internal audits and controls;

29 (i) a pro forma financial statement projecting assets, liabilities,
30 income and expenses for no less than a three year period;

31 (j) the impact of the public bank on the sponsor's financial condi-
32 tion;

33 (k) a plan to comply with the community reinvestment act and fair
34 lending requirements, pursuant to section two hundred ninety-six-a of
35 the executive law;

36 (l) a certificate of incorporation; and

37 (m) a narrative business plan describing the banking services to be
38 provided.

39 2. The public bank may but shall not be required to collateralize
40 deposits from the sponsor or any other governmental entity with collat-
41 eral determined by the public bank in its governing documents.

42 3. The public bank application documents are not required to provide
43 that the public bank will receive deposits in its initial three years of
44 operation, and not receiving deposits in the initial three years of
45 operation shall not be a reason for disapproval by the superintendent.

46 4. Public bank application documents are not required to include a
47 market, public convenience and advantage, competitive impact or a bank
48 premises analysis or address any other matters other than those listed
49 in subdivision one of this section.

50 5. Public bank charter applications that do not conflict with any
51 requirements expressly provided in subdivision one of this section shall
52 be liberally granted by the superintendent, and any decision by the
53 superintendent refusing to grant permission for the operation of a
54 public bank may be appealed by the sponsor to the governor within thirty
55 days from the date of such decision, and the governor shall have the

1 power to affirm, reverse, or modify such decision by the superintendent
2 in the governor's sole discretion.

3 § 156-d. Financial and operations framework. 1. The public bank may
4 raise capital through:

5 (a) sponsor equity contributions,

6 (b) passive member or shareholder equity contributions,

7 (c) donations, if the public bank is a not-for-profit corporation,

8 (d) sale of corporate debt to sponsor,

9 (e) sale of corporate debt to third parties, and

10 (f) the receipt and leverage of deposits.

11 2. The public bank shall have all the rights and powers conferred by
12 articles three and fifteen of this chapter, which must be exercised in a
13 manner consistent with its mission.

14 3. Within the overall underwriting and financial policies of the
15 public bank, the public bank shall maximize and prioritize loans
16 supporting worker cooperatives, community land trusts, low-income and
17 affordable housing, renewable energy, infrastructure development, small
18 businesses and small farms, minority- and women-owned business enter-
19 prises, and other initiatives that fulfill the public bank's mission,
20 with a focus on serving underserved and under-banked communities.

21 4. All lending and actions of the public bank shall abide by the
22 United Nations declaration on the rights of indigenous peoples.

23 5. The sponsor may prohibit investments and loans that may benefit any
24 type of designated business including the fossil fuel industry, weapons
25 or gun manufacturers, military systems companies, private prisons, immi-
26 gration detention facilities, companies engaged in offshore tax avoid-
27 ance or exploitative business or labor practices or the tobacco indus-
28 try, all as determined by the sponsor in the public bank's governing
29 documents.

30 6. The public bank shall be exempt from state, county, and municipal
31 taxes and licenses, of any kind, including income, capital gain, real
32 estate and mortgage recording taxes.

33 7. The public bank shall not be sold to or merged with another entity
34 unless such entity has a public bank charter.

35 § 156-e. Public benefit corporations. 1. A public bank may, but is not
36 required to, incorporate as a benefit corporation under article seven-
37 teen of the business corporation law.

38 2. A public bank may, but is not required to, identify in its certif-
39 icate of incorporation a specific public benefit, consistent with the
40 provisions of article seventeen of the business corporation law. Specif-
41 ic public benefits within the meaning of this section include, but are
42 not limited to, strengthening local economies, supporting community
43 economic development, addressing infrastructure and housing needs for
44 localities, and providing banking services to unbanked or underbanked
45 communities.

46 § 156-f. Insurance. A public bank shall obtain and maintain deposit
47 insurance consistent with section thirty-two of this chapter to the
48 extent that it accepts deposits from any third party that is not in
49 excess of two hundred fifty thousand dollars.

50 § 156-g. Deposit of public funds. 1. The public bank shall serve as
51 the depository for public deposits once the public bank has built suffi-
52 cient capacity to accept and manage public deposits as determined by the
53 commission. The commission shall establish a process and time frame for
54 the deposit of public moneys into the public bank.

55 2. The comptroller or chief financial officer of the municipality
56 shall deposit public moneys in the public bank in accordance with the

1 time frame and guidelines determined by the commission under this
2 section.

3 (a) All deposits in the public bank are guaranteed by the munici-
4 pality.

5 (b) All income earned by the public bank on public moneys that are
6 deposited in or invested with the public bank must be credited to and
7 become a part of the revenues and income of the public bank.

8 (c) The public bank may accept deposits of public funds, but shall be
9 exempt from the requirements of section one hundred five of this chap-
10 ter.

11 (d) The public bank may accept funds from any source, including feder-
12 al funds or other public funds.

13 (e) The commission shall review municipality accounts that contain
14 public funds that are not public moneys, and make recommendations to the
15 executive and the appropriate committees of the legislative body of the
16 municipality as to which accounts should be deposited in the bank.

17 (f) The bank shall make disbursements to the public funds as necessary
18 for the function of government.

19 § 156-h. Permitted activities of the public bank. 1. Investment of
20 public moneys. The public bank may invest public moneys deposited in
21 such bank that are not reasonably expected to be necessary to meet the
22 short or intermediate-term liquidity needs of the municipality. The
23 comptroller or chief financial officer of the municipality shall retain
24 authority to manage and invest the amount of funds necessary to meet the
25 operational needs of such municipality.

26 2. Infrastructure loans. The public bank is authorized to facilitate
27 investment in, and financing of, construction, rehabilitation, replace-
28 ment, and improvement of new and existing public infrastructure systems.
29 Before initiating operations, the commission must present an implementa-
30 tion plan and any necessary legislation to the executive and appropriate
31 legislative committees of the municipality, that:

32 (a) identifies the public infrastructure systems the public bank plans
33 to target initially;

34 (b) identifies any existing municipal programs that the public bank
35 recommends be transferred under its umbrella, and the steps and time-
36 lines for such transitions;

37 (c) describes additional financing products and services the public
38 bank plans to offer, the target markets, anticipated rates, terms, and
39 conditions;

40 (d) demonstrates how public bank products and services will increase
41 access to capital for public infrastructure systems and complement those
42 of existing public and private sources; and

43 (e) demonstrates how the public bank plans to maximize revenues and
44 public benefit.

45 3. Student loans. The public bank is authorized to administer a
46 government guarantee loan program to assist students in need of low-cost
47 student loans and related loan benefits to address educational needs as
48 necessary to support student success. The commission shall develop an
49 implementation plan that:

50 (a) identifies the needs and benefits to selected students that the
51 program will target initially;

52 (b) demonstrates how the public bank plans to maximize revenues and
53 public benefit while minimizing public risk;

54 (c) demonstrates how the public bank will coordinate with offices of
55 student financial assistance; and

1 (d) identifies ways that such program will address the following
2 issues related to loans:

3 (i) qualification criteria for students;
4 (ii) obligations and options for loan repayment;
5 (iii) requirements for loan guarantees and reserves;
6 (iv) fee and interest rate structure;
7 (v) maximum loan amounts; and
8 (vi) ensuring student awareness of grants, federal loans, and other
9 financial aid programs.

10 4. Small business, minority- and women-owned business enterprises and
11 farmers. (a) The public bank is authorized to leverage thirty percent of
12 public deposits as financial capital and resources to provide access to
13 low-cost capital and/or credit to minority- and women-owned business
14 enterprises, entrepreneurs, start-up businesses, and below average
15 income communities and individuals of the municipality to further
16 economic growth, and create jobs.

17 (b) The public bank is authorized to leverage its financial capital
18 and resources to provide access to low-cost capital and/or credit to
19 bring fiscally sound and financially successful businesses.

20 (c) The public bank is authorized to leverage its financial capital
21 and resources to provide access to low-cost capital and/or credit to
22 established businesses within the municipality for the purpose of
23 providing financial stability for such bank as provided for under this
24 section.

25 5. Farm subsidy assistance. (a) The public bank is authorized to
26 leverage its public deposits as financial capital and resources to
27 provide access to low-cost capital and/or credit to farmers and below
28 average income communities and individuals within the municipality to
29 further economic growth, create jobs and build and sustain a productive
30 economy for the residents of such municipality.

31 (b) The public bank is authorized to leverage its financial capital
32 and resources to provide access to low-cost capital to bring fiscally
33 sound and financially successful businesses into the municipality.

34 (c) The public bank is authorized to leverage its financial capital
35 and resources to provide access to low-cost capital and/or credit to
36 established farm businesses in the municipality for the purpose of
37 providing financial stability for such bank as provided for under this
38 section.

39 6. Affordable housing. The public bank is authorized to leverage its
40 public deposits as financial capital and resources to provide access to
41 low-cost capital and/or credit to fund projects that provide affordable
42 housing for residents, particularly in economically distressed communi-
43 ties or below average income communities within a municipality to
44 further economic growth, create jobs and build and sustain a productive
45 economy for the residents of such municipality.

46 § 156-i. Inconsistency with other laws. 1. A public bank shall comply
47 with all requirements of this chapter, the financial services law, the
48 state finance law, the local finance law, the general municipal law, the
49 not-for-profit corporation law, and all other relevant provisions of
50 state or local law, except to the extent that a requirement of any of
51 those laws is inconsistent with a provision of this article, in which
52 case the provisions of this article shall prevail.

53 2. Notwithstanding any provision of state or local law, a county or
54 other state or local authority may lend its credit to any public bank.

1 3. Notwithstanding any provision of state or local law, any state or
2 local authority may invest in commercial paper, debt securities or other
3 obligations of a public bank.

4 4. Notwithstanding any provision of state or local law, a public bank
5 shall be eligible to receive state and local authority money.

6 § 156-j. Owners not to be considered bank holding companies. For the
7 purposes of section one hundred thirty-two of this chapter, any sponsor,
8 person or entity, including a state or local authority, that owns,
9 controls, or holds an ownership interest in a public bank is not a bank
10 holding company by reason of that ownership interest.

11 § 5. Section 98 of the state finance law is amended by adding a new
12 subdivision 7-a to read as follows:

13 7-a. Commercial paper, debt securities, bonds, notes, or other obli-
14 gations of a public bank, as defined in article three-C of the banking
15 law.

16 § 6. Paragraph d of subdivision 1 of section 10 of the general municipi-
17 pal law, as amended by chapter 623 of the laws of 1998, is amended to
18 read as follows:

19 d. "Bank" shall mean a bank or public bank as defined by the banking
20 law or a national banking association located and authorized to do busi-
21 ness in New York.

22 § 7. This act shall take effect immediately.