

STATE OF NEW YORK

5565--A

2019-2020 Regular Sessions

IN SENATE

May 7, 2019

Introduced by Sens. SANDERS, JACKSON, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, 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,

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

LBD10967-04-0

private bankers, savings banks, safe deposit companies, savings and loan associations, credit unions, public banks organized under article three-C of this chapter, and investment companies.

§ 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. Inconsistency with other laws.

156-h. 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. "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.

6. "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.

7. "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.

8. "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.

9. "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 that is formed by a sponsor, subject to the following corporate structure requirements:

1. The sponsor shall be (a) the sole member of a not-for-profit public bank, (b) the majority and controlling member of a limited liability

1 company public bank, and (c) the majority and controlling shareholder of
2 a corporation public bank.

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

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

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

20 § 156-b. Governance. 1. The public bank shall be governed by a board.
21 Such board shall be composed of no fewer than five directors and no more
22 than eleven directors. Each director shall live within the jurisdic-
23 tional boundaries of the sponsor.

24 2. The sponsor shall determine the public bank's initial board, the
25 term of the board, the qualifications of the board and the method for
26 replacing the board.

27 3. A majority of the board shall be composed of independent directors
28 who are not government employees. The chair of the board must be an
29 independent director.

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

35 5. The board may establish one or more committees to manage the public
36 bank.

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

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

42 (a) provide input to the board regarding ways to accomplish its
43 mission;

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

47 (c) provide technical advice as needed; and

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

51 8. The sponsor will determine the initial advisory board membership,
52 the term of its members, the qualifications of members and the method
53 for replacing its members, provided that a majority of each advisory
54 board is made up of independent members who are not governmental employ-
55 ees. The advisory board shall be composed of no fewer than five and no
56 more than eleven members. Any advisory board member shall live within

1 the jurisdictional boundary of the public bank's sponsor or its members
2 or shareholders.

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

9 § 156-c. Public bank charter requirements. 1. A proposed public bank
10 shall be chartered by the department upon submission of the public bank
11 application documents that demonstrate the following:

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

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

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

19 (d) the qualifications of the proposed directors;

20 (e) the qualifications of the proposed chief executive officer and
21 management team;

22 (f) an organizational chart;

23 (g) procedures for obtaining fidelity insurance;

24 (h) sufficient internal audits and controls;

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

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

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

32 (l) a certificate of incorporation; and

33 (m) a narrative business plan describing the banking services to be
34 provided.

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

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

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

46 5. Public bank charter applications that do not conflict with any
47 requirements expressly provided in subdivision one of this section shall
48 be liberally granted by the superintendent, and any decision by the
49 superintendent refusing to grant permission for the operation of a
50 public bank may be appealed by the sponsor to the governor within thirty
51 days from the date of such decision, and the governor shall have the
52 power to affirm, reverse, or modify such decision by the superintendent
53 in the governor's sole discretion.

54 § 156-d. Financial and operations framework. 1. The public bank may
55 raise capital through:

56 (a) sponsor equity contributions,

(b) passive member or shareholder equity contributions,
(c) donations, if the public bank is a not-for-profit corporation,
(d) sale of corporate debt to sponsor,
(e) sale of corporate debt to third parties, and
(f) the receipt and leverage of deposits.

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

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

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

5. The sponsor may prohibit investments and loans that may benefit any type of designated business including the fossil fuel industry, weapons or gun manufacturers, military systems companies, private prisons, immigration detention facilities, companies engaged in offshore tax avoidance or exploitative business or labor practices or the tobacco industry, all as determined by the sponsor in the public bank's governing documents.

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

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

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

2. A public bank may, but is not required to, identify in its certificate of incorporation a specific public benefit, consistent with the provisions of article seventeen of the business corporation law. Specific public benefits within the meaning of this section include, but are not limited to, strengthening local economies, supporting community economic development, addressing infrastructure and housing needs for localities, and providing banking services to unbanked or underbanked communities.

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

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

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

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

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

3 § 156-h. Owners not to be considered bank holding companies. For the
4 purposes of section one hundred thirty-two of this chapter, any sponsor,
5 person or entity, including a state or local authority, that owns,
6 controls, or holds an ownership interest in a public bank is not a bank
7 holding company by reason of that ownership interest.

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

10 7-a. Commercial paper, debt securities, bonds, notes, or other obli-
11 gations of a public bank, as defined in article three-C of the banking
12 law.

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

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

19 § 7. This act shall take effect immediately.