

# 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.

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

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

6 ARTICLE 3-C  
7 PUBLIC BANKS

8 Section 156. Definitions.

9 156-a. Sponsors and corporate structure.

10 156-b. Governance.

11 156-c. Public bank charter requirements.

12 156-d. Financial and operations framework.

13 156-e. Public benefit corporations.

14 156-f. Insurance.

15 156-g. Inconsistency with other laws.

16 156-h. Owners not to be considered bank holding companies.

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

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

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

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

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

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

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

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

36 6. "Public bank" means a not-for-profit corporation, a stock corpo-  
37 ration or limited liability company that is chartered pursuant to this  
38 article as a bank.

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

43 8. "State or local authority" means a local government or agency, a  
44 group of two or more local governments or agencies acting together,  
45 special district, a group of two or more special districts acting  
46 together, state agency, or a group of two or more state agencies acting  
47 together.

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

50 § 156-a. Sponsors and corporate structure. A public bank may be a  
51 not-for-profit corporation, a limited liability company or corporation  
52 that is formed by a sponsor, subject to the following corporate struc-  
53 ture requirements:

54 1. The sponsor shall be (a) the sole member of a not-for-profit public  
55 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,

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

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

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

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

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

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

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

30 § 156-e. Public benefit corporations. 1. A public bank may, but is not  
31 required to, incorporate as a benefit corporation under article seven-  
32 teen of the business corporation law.

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

41 § 156-f. Insurance. A public bank shall obtain and maintain deposit  
42 insurance consistent with section thirty-two of this chapter to the  
43 extent that it accepts deposits from any third party that is not in  
44 excess of two hundred fifty thousand dollars.

45 § 156-g. Inconsistency with other laws. 1. A public bank shall comply  
46 with all requirements of this chapter, the financial services law, the  
47 state finance law, the local finance law, the general municipal law, the  
48 not-for-profit corporation law, and all other relevant provisions of  
49 state or local law, except to the extent that a requirement of any of  
50 those laws is inconsistent with a provision of this article, in which  
51 case the provisions of this article shall prevail.

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

54 3. Notwithstanding any provision of state or local law, any state or  
55 local authority may invest in commercial paper, debt securities or other  
56 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.