

STATE OF NEW YORK

5565--C

2019-2020 Regular Sessions

IN SENATE

May 7, 2019

Introduced by Sens. SANDERS, BENJAMIN, BIAGGI, HOYLMAN, JACKSON, KRUEGER, MAY, PARKER, RIVERA, 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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

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

LBD10967-08-0

1 a trust company, organized under or subject to the provisions of article
2 three or three-C of this chapter.

3 11. Banking organizations. The term, "banking organizations," when
4 used in this chapter, means and includes all banks, trust companies,
5 private bankers, savings banks, safe deposit companies, savings and loan
6 associations, credit unions, public banks organized under article
7 three-C of this chapter, and investment companies.

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

10 ARTICLE 3-C
11 PUBLIC BANKS

12 Section 156. Definitions.

13 156-a. Sponsors and corporate structure.

14 156-b. Governance.

15 156-c. Public bank charter requirements.

16 156-d. Financial and operations framework.

17 156-e. Public benefit corporations.

18 156-f. Insurance.

19 156-g. Deposit.

20 156-h. Permitted activities of the public bank.

21 156-i. Inconsistency with other laws.

22 156-j. Owners not to be considered bank holding companies.

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

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

26 2. "Affiliate" means:

27 (a) in the case of a person (other than an individual), another person
28 that directly, or indirectly through one of more intermediaries,
29 controls, or is controlled by, or is under common control with such
30 person.

31 (b) in the case of an individual, (i) any member of the immediate
32 family of such individual, including parents, siblings, spouse and chil-
33 dren (including those by adoption) and any other person who lives in
34 such individual's household; the parents, siblings, spouse, or children
35 (including those by adoption) of such immediate family member, and in
36 any such case any trust whose primary beneficiary is such individual or
37 one or more members of such immediate family and/or such individual's
38 lineal descendants; (ii) the legal representative or guardian of such
39 individual or of any such immediate family member in the event such
40 individual or any such immediate family member becomes mentally incompe-
41 tent; and (iii) any person controlling, controlled by or under common
42 control with such individual.

43 (c) As used in this definition, the term "control," including the
44 correlative terms "controlling," "controlled by" and "under common
45 control with," means possession, directly or indirectly, of the power to
46 direct or cause the direction of management or policies (whether through
47 ownership of securities or any partnership or other ownership interest,
48 by contract or otherwise) of a person. Such control shall be presumed to
49 exist where a person owns a ten percent or greater ownership interest in
50 another person.

51 (d) "Person" shall be construed broadly and shall include, without
52 limitation, an individual, a partnership, a limited liability company, a
53 corporation, an association, a joint stock company, a trust, a joint
54 venture, an unincorporated organization and a governmental entity or any
55 department, agency or political subdivision thereof.

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

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

6 5. "Deposit" means the placing of money with a public bank to be with-
7 drawn upon the depositor's demand or under the rules and regulations
8 agreed upon between the bank and the depositor.

9 6. "Economically distressed communities" means those communities where
10 at least thirty percent of residents have incomes that are less than the
11 national poverty level or where the unemployment rate is greater than
12 the national unemployment rate; or economic opportunity zone designated
13 communities, excluding contiguity economic opportunities zones.

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

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

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

22 8. "Local elected official" means any officer elected to a position
23 within a county, city, town, village, school district or district corpo-
24 ration, or any agency, department, division, board, commission or bureau
25 thereof; provided, that, such term shall not include any judge or
26 justice of a court.

27 9. "Public bank" means a not-for-profit corporation, a stock corpo-
28 ration or limited liability company that is chartered pursuant to this
29 article as a bank.

30 10. "Public bank application documents" means a business plan and
31 application to be submitted to the department of financial services
32 pursuant to section one hundred fifty-six-c of this article for the
33 purpose of chartering a public bank.

34 11. "Public funds" means funds of the sponsor.

35 12. "State or local authority" means a local government or agency, a
36 group of two or more local governments or agencies acting together,
37 special district, a group of two or more special districts acting
38 together, state agency, or a group of two or more state agencies acting
39 together.

40 13. "Sponsor" means one or more cities, towns, villages and/or coun-
41 ties within the state of New York.

42 § 156-a. Sponsors and corporate structure. A public bank may be a
43 not-for-profit corporation, a limited liability company or corporation
44 that is formed by a sponsor, subject to the following corporate struc-
45 ture requirements:

46 1. The sponsor shall be (a) the sole member of a not-for-profit public
47 bank, (b) the majority and controlling member of a limited liability
48 company public bank, and (c) the majority and controlling shareholder of
49 a corporation public bank.

50 2. A public bank organized as a limited liability company or corpo-
51 ration may have other members or shareholders but such other members or
52 shareholders shall only be passive members or shareholders and shall not
53 have any consent or veto rights over any decisions, any removal rights
54 of the sponsor, any rights to elect or choose the board or any voting
55 rights whatsoever.

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

7 4. The sponsor shall owe no fiduciary duty nor any other duty to
8 passive investors. No passive investor may pursue legal action against
9 the sponsor for any reason other than failure to distribute funds
10 required to be distributed pursuant to governing documents of the public
11 bank.

12 § 156-b. Governance. 1. The public bank shall be governed by a board.
13 Such board shall be composed of nine directors or eleven directors. Each
14 director shall live within the jurisdictional boundaries of the sponsor.

15 2. The sponsor shall determine the public bank's initial board in the
16 following manner:

17 (a) the mayor, or head of the executive branch of government of the
18 sponsor or sponsors, shall select three members;

19 (b) the city council, or legislative branch of the sponsor or sponsors
20 shall select two members;

21 (c) the treasurer, controller or elected official charged with over-
22 seeing the sponsor or sponsors' finances and the administration of
23 public funds shall select one member; and

24 (d) the board members selected pursuant to paragraphs (a) through (c)
25 of this subdivision shall, pursuant to a two-thirds majority vote,
26 select at their discretion either three or five additional board
27 members, with the sole purpose of maximizing board diversity to include
28 a variety of the sponsor's community constituents.

29 3. At least two board members selected pursuant to each of paragraphs
30 (a) through (c) of subdivision two of this section shall be individuals
31 with experience in the finance industry or the business of banking with
32 an emphasis on community lending.

33 4. At least one board member selected pursuant to each of paragraphs
34 (a) through (c) of subdivision two of this section shall be an individ-
35 ual representative of at least one of the community stakeholders prior-
36 itized by the public bank's underwriting and financial policies as
37 reflected in section one hundred fifty-six-h of this article.

38 5. When a board member resigns or leaves office for any reason, the
39 individual selected to replace such board member shall be selected by
40 whatever branch of government or the board selected their predecessor
41 under paragraphs (a) through (d) of subdivision two of this section.

42 6. The sponsor and board will take all steps necessary to ensure that
43 the composition of the board reflects the composition of the population
44 in terms of people of color and women.

45 7. A majority of the board shall be composed of independent directors
46 who are not government employees. The chair of the board must be an
47 independent director.

48 8. The board shall set policy for the public bank; provided that
49 neither the board nor any director shall be involved in day to day deci-
50 sions regarding particular instruments. Management decisions shall be
51 made independently by bank management who shall be appointed by the
52 board consistent with bank policy.

53 9. The board may establish one or more committees to manage the public
54 bank.

55 10. The board shall adhere to all reporting requirements under this
56 chapter regarding the public bank's financial condition.

1 11. A public bank shall form one or more advisory boards in order to
2 provide advice and carry out any other duties, as determined by the
3 public bank, including the following:

4 (a) provide input to the board regarding ways to accomplish its
5 mission;

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

9 (c) provide technical advice as needed; and

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

13 12. The sponsor will determine the initial advisory board membership,
14 the term of its members, the qualifications of members and the method
15 for replacing its members, provided that a majority of each advisory
16 board is made up of independent members who are not governmental employ-
17 ees. The advisory board shall be composed of no fewer than five and no
18 more than eleven members. Any advisory board member shall live within
19 the jurisdictional boundary of the public bank's sponsor or its members
20 or shareholders.

21 13. Any action required or permitted by this chapter to be taken by
22 the board or an advisory board may be taken at a duly called meeting of
23 such board in accordance with its governing documents or without a meet-
24 ing if the action taken is evidenced by one or more written consents
25 describing the action taken and signed by each member of the board or
26 advisory board.

27 § 156-c. Public bank charter requirements. 1. A proposed public bank
28 shall be chartered by the department upon submission of the public bank
29 application documents that demonstrate the following:

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

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

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

37 (d) the qualifications of the proposed directors;

38 (e) the qualifications of the proposed chief executive officer and
39 management team;

40 (f) an organizational chart;

41 (g) policies and procedures prohibiting any elected official, or
42 affiliate of such officials, from receiving a loan or other financial
43 assistance from the public bank;

44 (h) procedures for obtaining fidelity insurance;

45 (i) sufficient internal audits and controls;

46 (j) a pro forma financial statement projecting assets, liabilities,
47 income and expenses for no less than a three year period;

48 (k) the impact of the public bank on the sponsor's financial condi-
49 tion;

50 (l) a plan to comply with the community reinvestment act and fair
51 lending requirements, pursuant to section two hundred ninety-six-a of
52 the executive law;

53 (m) a certificate of incorporation; and

54 (n) a narrative business plan describing the banking services to be
55 provided.

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

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

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

12 5. Public bank charter applications that do not conflict with any
13 requirements expressly provided in subdivision one of this section shall
14 be liberally granted by the superintendent, and any decision by the
15 superintendent refusing to grant permission for the operation of a
16 public bank may be appealed by the sponsor to the governor within thirty
17 days from the date of such decision, and the governor shall have the
18 power to affirm, reverse, or modify such decision by the superintendent
19 in the governor's sole discretion.

20 § 156-d. Financial and operations framework. 1. The public bank may
21 raise capital through:

22 (a) the receipt and leverage of public deposits, including but not
23 limited to the general fund, reserve fund, special district or capital
24 fund,

25 (b) sponsor equity contributions,

26 (c) passive member or shareholder equity contributions,

27 (d) sale of corporate debt to sponsor, and

28 (e) sale of corporate debt to third parties.

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

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

34 4. The sponsor may prohibit investments and loans that may benefit any
35 type of designated business including the fossil fuel industry, weapons
36 or gun manufacturers, military systems companies, private prisons, immi-
37 gration detention facilities, companies engaged in offshore tax avoid-
38 ance or exploitative business or labor practices or the tobacco indus-
39 try, all as determined by the sponsor in the public bank's governing
40 documents.

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

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

46 § 156-e. Public benefit corporations. 1. A public bank may, but is not
47 required to, incorporate as a benefit corporation under article seven-
48 teen of the business corporation law.

49 2. A public bank may, but is not required to, identify in its certifi-
50 cate of incorporation a specific public benefit, consistent with the
51 provisions of article seventeen of the business corporation law. Specif-
52 ic public benefits within the meaning of this section include, but are
53 not limited to, strengthening local economies, supporting community
54 economic development, addressing infrastructure and housing needs for
55 localities, and providing banking services to unbanked or underbanked
56 communities.

1 § 156-f. Insurance. A public bank shall obtain and maintain deposit
2 insurance consistent with section thirty-two of this chapter to the
3 extent that it accepts deposits from any third party that is not in
4 excess of two hundred fifty thousand dollars.

5 § 156-g. Deposits. 1. The board shall develop a plan, subject to
6 approval by the advisory board, to accept and manage deposits.

7 2. The comptroller or chief financial officer of the sponsor shall be
8 authorized to deposit public funds in the public bank, provided that the
9 public bank's business plan permits the comptroller or chief financial
10 officer to meet the short or intermediate-term liquidity needs of the
11 sponsor.

12 3. The public bank may accept deposits, but shall be exempt from the
13 requirements of section one hundred five of this chapter.

14 4. The public bank may accept deposits from any source and funds from
15 any source, including federal funds.

16 § 156-h. Permitted activities of the public bank. 1. The public bank
17 shall have all the rights and powers conferred by articles three and
18 fifteen of this chapter, which shall be exercised in a manner consistent
19 with its mission. The public bank may limit and define its rights and
20 powers in the charter that it submits pursuant to section one hundred
21 fifty-six-c of this article, but it is the intention to grant any public
22 bank created under this law the full rights and powers that any bank
23 would be permitted to exercise under New York's banking laws, subject to
24 those limitations that will be approved by the department.

25 2. Within the overall underwriting and financial policies of the
26 public bank, the public bank shall maximize and prioritize loans
27 supporting worker cooperatives, community land trusts, low-income and
28 affordable housing, renewable energy, infrastructure development, small
29 businesses, small farms, minority- and women-owned business enterprises,
30 students in need of low-cost education financing or refinancing student
31 loan debts, and other initiatives that fulfill the public bank's
32 mission, with a focus on serving underserved and underbanked communi-
33 ties, as well as those within economically distressed communities.

34 § 156-i. Inconsistency with other laws. 1. A public bank shall comply
35 with all requirements of this chapter, the financial services law, the
36 state finance law, the local finance law, the general municipal law, the
37 not-for-profit corporation law, and all other relevant provisions of
38 state or local law, except to the extent that a requirement of any of
39 those laws is inconsistent with a provision of this article, in which
40 case the provisions of this article shall prevail.

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

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

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

48 § 156-j. Owners not to be considered bank holding companies. For the
49 purposes of section one hundred thirty-two of this chapter, any sponsor,
50 person or entity, including a state or local authority, that owns,
51 controls, or holds an ownership interest in a public bank is not a bank
52 holding company by reason of that ownership interest.

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

1 7-a. Commercial paper, debt securities, bonds, notes, or other obli-
2 gations of a public bank, as defined in article three-C of the banking
3 law.

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

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

10 § 7. This act shall take effect immediately.