STATE OF NEW YORK

5782

2021-2022 Regular Sessions

IN ASSEMBLY

February 25, 2021

Introduced by M. of A. PICHARDO, JACKSON, FALL, MAMDANI -- read once and referred to the Committee on Banks

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:

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

§ 2. It is the intent of the legislature that this act (i) authorizes municipal and other local governments to form and control public banks through the ownership of capital stock or other ownership interests, and to loan or grant public funds or lend public credit to such public banks for the public purposes of achieving cost savings, strengthening local economies, supporting community economic development, and addressing infrastructure and housing needs for localities; and (ii) codifies the common law interpretation of the New York state constitution that cities, counties, and other municipalities may own stock or other ownership interests in, and lend or grant money to, public and private corporations, limited liability companies or not-for-profit corporations, so long as such actions are pursuant to public purposes.

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

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

11. Banking organizations. The term, "banking organizations," when 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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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. Insurance.
156-f. Deposits.
156-g. Permitted activities of the public bank.
156-h. Inconsistency with other laws.
156-i. 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. "Affiliate" means:

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

(b) in the case of an individual, (i) any member of the immediate family of such individual, including parents, siblings, spouse and children (including those by adoption) and any other person who lives in such individual's household; the parents, siblings, spouse, or children (including those by adoption) of such immediate family member, and in any such case any trust whose primary beneficiary is such individual or one or more members of such immediate family and/or such individual's lineal descendants; (ii) the legal representative or guardian of such individual or of any such immediate family member in the event such individual or any such immediate family member becomes mentally incompetent; and (iii) any person controlling, controlled by or under common control with such individual.

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

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

3. "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.

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

5. "Community banking experience" means current or past employment experience as an officer, director or executive, or current or past employment experience in a senior leadership role at any of the following:

(a) a community development financial institution that is a credit union, loan fund, minority depository institution, union controlled bank or locally based community bank; or

(b) a credit union, loan fund, minority depository institution, union controlled bank or locally based community bank that otherwise serves low-income, rural or other underserved or economically distressed communities.

6. "Community development financial institution" means an entity that has been certified as meeting the eligibility requirements of section 1805.201 of title 12 of the code of federal regulations.

7. "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.

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

9. "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.

10. "Local elected official" means any officer elected to a position within a county, city, town, village, school district or district corporation, or any agency, department, division, board, commission or bureau thereof; provided, that, such term shall not include any judge or justice of a court.

11. "Minority depository institution" means any depository institution that is owned in any of the following manners:

(a) a privately owned institution of which fifty-one percent is owned by one or more individuals who are minorities;

(b) a publicly owned institution of which fifty-one percent of the stock is owned by one or more minorities; or

(c) an institution otherwise designated as a minority depository institution by the institution's applicable federal regulators.

12. "Minority" means citizens or permanent resident aliens who are Black, Hispanic, Asian or American Indian.

13. "Public bank" means a not-for-profit corporation, a stock corporation, including a public benefit corporation incorporated pursuant to article seventeen of the business corporation law, or limited liability company that is chartered pursuant to this article as a bank. A public bank formed as a stock corporation or a not-for-profit corporation shall be a public corporation, and a public bank formed as a limited liability corporation shall be a public limited liability company.

14. "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.

15. "Public corporation" means a stock corporation, including a public benefit corporation incorporated pursuant to article seventeen of the business corporation law, or a not-for-profit corporation that is incorporated, owned and controlled by a county, city, town or village.

16. "Public funds" means funds of the sponsor.

17. "Public limited liability company" means a limited liability company that is incorporated, owned and controlled by a county, city, town or village.

18. "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.

19. "Sponsor" means one or more cities, towns, villages and/or counties within the state of New York with an aggregate population of at least one hundred thousand residents.

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

1. If incorporated as a business corporation, a public bank may, but is not required to:

(a) incorporate as a public benefit corporation under article seventeen of the business corporation law; or

(b) 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 shall 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.

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

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

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

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

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

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

(a) the mayor, or head of the executive branch of government of the sponsor or sponsors, shall appoint three members, at least one of whom shall have community banking experience and at least one of whom shall be independent;

(b) the city council, or legislative branch of the sponsor or sponsors shall appoint two members, at least one of whom shall have community banking experience and at least one of whom shall be independent;

(c) the treasurer, controller or elected official charged with overseeing the sponsor or sponsors' finances and the administration of public funds shall appoint one member who shall have community banking experience and be independent; and

(d) the board members selected pursuant to paragraphs (a) through (c) of this subdivision shall, pursuant to a two-thirds majority vote, appoint at their discretion and in accordance with subdivisions five and six of this section, either three or five additional board members, with the purpose of maximizing board diversity to include a variety of the sponsor's community stakeholders, including community-based organizations, labor organizations and those groups prioritized by the public bank's underwriting and financial policies, as reflected in section one hundred fifty-six-g of this article. For any sponsor that is also a city with a population of one million or more, the board members selected pursuant to paragraphs (a) through (c) of this subdivision may, pursuant to a two-thirds majority vote, appoint either seven or nine additional board members to maximize board diversity.

3. The board shall adopt bylaws, governing documents or their functional equivalents as required by the not-for-profit corporation law, business corporation law, or limited liability company law, as applicable, based on the corporate structure of the public bank. Such governing documents shall include:

(a) procedures to remove directors consistent with this article;

(b) a provision requiring that the board membership of any board member who also serves as a public official or local elected official of the sponsor shall terminate immediately upon such board member ceasing to hold such public office; and

(c) appropriate term limits for board members, consistent with paragraph (b) of this subdivision.

4. At least one board member appointed pursuant to paragraphs (a) and (b) of subdivision two of this section shall be a representative of one of the community stakeholders prioritized by the public bank's underwriting and financial policies as reflected in section one hundred fifty-six-g of this article.

5. When a board member resigns or ceases to be a board member for any reason, the individual appointed to replace such board member shall be appointed in accordance with the same selection criteria and process by which such departing member was appointed under subdivision two of this section.

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

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

8. The board shall set policy for the public bank; provided that neither the board nor any director shall be involved in day to day deci-

sions regarding particular instruments. Management decisions shall be made independently by bank management who shall be appointed by the board consistent with bank policy.

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

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

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

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

(b) ensure that the board follows strict ethical standards as determined by the sponsor in the public bank's governing documents, through the approval of bylaws or a code of conduct to govern the board's management;

(c) provide technical advice as needed; and

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

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

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

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

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

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

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

(d) the qualifications of the proposed directors;

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

(f) an organizational chart;

(g) policies and procedures prohibiting any elected official, or affiliates of such officials, from receiving a loan or other financial benefit from the public bank;

(h) procedures for obtaining fidelity insurance;

(i) sufficient internal audits and controls;

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

(k) the impact of the public bank on the sponsor's financial condition;

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

(m) a certificate of incorporation;

(n) a narrative business plan describing the banking services to be provided; and

(o) such other information as the department may require.

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

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

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

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

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

(a) the receipt and leverage of public deposits,

(b) sponsor equity contributions,

(c) passive member or shareholder equity contributions,

(d) sale of corporate debt to sponsor, and

(e) sale of corporate debt to third parties.

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

4. 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.

5. 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.

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

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

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

3. The public bank may accept deposits, but shall be exempt from the requirements of section ten of the general municipal law.

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

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

2. 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, small farms, minority- and women-owned business enterprises, students in need of low-cost education financing or refinancing student loan debts, and other initiatives that fulfill the public bank's mission, with a focus on serving underserved and underbanked communities, as well as those within economically distressed communities.

§ 156-h. 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.

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

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

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

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

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

d. "Bank" shall mean a bank **or public bank** as defined by the banking law or a national banking association located and authorized to do business in New York.

§ 7. This act shall take effect immediately.